Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-915

VERNON LEE BOUNDS, et al.,

Petitioners,

v.

ROBERT (BOBBY) SMITH, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS

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Petitioners,

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS

SUMMARY OF ARGUMENT

In *Younger v. Gilmore,* 404 U.S. 15 (1971), affirming *Gilmore v. Lynch,* 319 F. Supp. 105 (N.D. Cal. 1970) (three-judge court), this Court, after briefing and argument, unanimously affirmed the judgment of a three-judge court which held that a state is constitutionally obligated to protect its prisoners' right of access to the courts by providing them access to the law in the form of adequate law books or a reasonable

alternative. *Gilmore* has been widely acclaimed and has received support from all of the Courts of Appeal that have had occasion to pass on it, from the United States Government, from national commissions, from the American Bar Association, from the American Correctional Association and individual correctional administrators, from the American Library Association and the American Association of Law Libraries, and from many other organizations as well as from the legal literature. Almost every state is in compliance with *Gilmore*. Many have gone beyond its minimal requirements and provided comprehensive legal services programs, often using law students and trained inmate paralegals as well as lawyers, in addition to or instead of law libraries. The experience with all of these programs has been rewarding. Prisoners have received the constitutionally required help with the preparation of their court actions, and in the process frivolous petitions have been reduced by as much as half and the quality of those petitions that have been filed has improved considerably.

North Carolina does nothing to help its prisoners overcome the obstacles which incarceration imposes on their access to the courts. It provides its prisoners with no law books, except a few at its maximum security prison, and no legal assistance in the preparation of state or federal collateral attacks on their convictions, in the preparation or pursuit of state or federal actions challenging the conditions of their confinement, or in the resolution of detainers lodged against them.

In finding that North Carolina was therefore in violation of its constitutional responsibility, and in approving the State's plan for bringing itself into compliance, the District Court and the Court of

Appeals accorded the proper regard for the expertise and discretion of prison officials. North Carolina has not suggested any respect in which those courts disregarded their expertise or unreasonably disturbed their discretion. They left the design of the method by which North Carolina would comply with *Younger v. Gilmore* to the State, and approved the plan submitted by the State with only minor modifications.

ARGUMENT

NORTH CAROLINA IS IN VIOLATION OF ITS CONSTITUTIONAL OBLIGATION TO PROTECT ITS PRISONERS' RIGHT TO MEANINGFUL ACCESS TO THE COURTS BECAUSE IT HAS FAILED TO PROVIDE THEM LAW BOOKS FOR A REASONABLE ALTERNATIVE.

I.

INTRODUCTION.

(A) *The North Carolina Department of Correction and its Prisoners.* The North Carolina Department of Correction administers the prison system in North Carolina, and has custody of all persons serving prison sentences in excess of thirty days. N.C. Gen. Stat. §148-4 (1975 Supp.). Its inmates have been convicted of crimes ranging from the felonies of murder and rape to the misdemeanors of non-support, trespassing and drunkenness. See North Carolina Department of Correction, *State Correction Statistical Abstract* 2 (March 1976). This includes the largest death row population in

the country, a situation that should change shortly as a result of *Woodson v. North Carolina*, 44 U.S. L. Week 5267 (1976). In addition, the Department of Correction has custody of "safekeepers" who have been convicted of crimes and are in custody pending their appeals, N.C. Gen. Stat. §15-183 (1975 Supp.); see generally *Kersh v. Bounds*, 501 F.2d 585 (4th Cir. 1974), and occasionally "safekeepers" who have not been convicted of crimes but are in custody pending their trials when certain conditions necessitate their being held in the prisons, N.C. Gen. Stat. §162-39 (1975 Supp.), rather than in the county jails as is the general practice. N.C. Gen. Stat. §15-126 (1975 Supp.). The prisoners are housed in eighty prisons situated in sixty-seven of the one hundred counties in the state. App. 11. At the time this case was before the District Court the average daily population was 10,000 inmates. App. 11. As petitioners point out, the prison system is now overcrowded with 13,000 prisoners. Brief for Petitioners 7, n. 3. More than 10,000 are serving time for felony convictions; over 3,000 have sentences of ten years or more, 3,000 have sentences of five to ten years, and another 3,500 have sentences of two to five years. North Carolina Department of Correction, *State Correction Statistical Abstract* 29 (March 1976). North Carolina ranks fifth in the nation in the size of its prison population, and is catching up to California, Texas, New York and Florida because our State led the nation in the number of new prison commitments in 1974 and 1975. National Clearinghouse for Criminal Justice Planning and Architecture, *Transfer*, "United States Incarceration and Commitment Rates" (University of Illinois 1976). Already North Carolina ranks first in the nation in the percentage of its residents who are locked up in its prisons. *Id.*

Many persons charged with crime in North Carolina and awaiting trial are, of course, not in custody. N.C. Gen. Stat. §15A-533 (1975). In addition, many who have been convicted of crimes and sentenced are not in custody. Some are released pending appeal. N.C. Gen. Stat. §15A-536 (1975). Many are sentenced to probation and never go to prison. N.C. Gen. Stat. §15-197 (1975). Others have served time and are on parole. N.C. Gen. Stat. §148-58 (1975 Supp.); see also, N.C. Gen. Stat. §15-197.1 (1975 Supp.) (split sentences).

Those who are not in custody are, of course, free to earn funds with which to retain counsel. In addition, they are free to use several law libraries across the state.[1] By contrast, those who, like respondents, are imprisoned are, naturally, deprived of those opportunities. Petitioners, as their custodians, prohibit them from visiting any of the several public law libraries in the

[1] Those law libraries include the following: in Chapel Hill at the University of North Carolina, the Law School library consisting of more than 150,000 volumes, and the Institute of Government library, consisting of more than 14,000 volumes; in Charlotte, the Charlotte Law library, consisting of more than 18,000 volumes; in Durham, the Duke University Law School library, consisting of more than 180,000 volumes, and the North Carolina Central University Law School library, consisting of more than 33,000 volumes; in Greensboro, the law collection at North Carolina Agricultural and Technical College, consisting of more than 12,000 volumes; in Raleigh, the North Carolina Supreme Court library, consisting of more than 75,000 volumes; and in Winston-Salem, the Wake Forest University Law School library, consisting of more than 51,000 volumes. American Association of Law Libraries, *Directory of Law Libraries* 36 (CCH 1974). A new law school will open this fall at Campbell College in Buies Creek.

state. They also restrict their opportunities to accumulate funds with which to purchase their own law books or hire attorneys; under state law the maximum wage that prisoners may earn is one dollar per day. N.C. Gen. Stat. §148-18 (1975 Supp.). Moreover, petitioners forbid state prisoners to receive law books except "directly from the publisher." Regulation .0101 of Subchapter 2D, Policies and Procedures of the North Carolina Department of Correction, Division of Prisons.[2] The effect of this regulation is that prisoners must learn the names of the publishers of law books before they can order them, they may not receive law books as gifts from family, friends, lawyers or others, and they may not take advantage of special sales opportunities for law books, such as opportunities to buy them used or on sale. While each of these restrictions may be permissible in its own right,[3] individually and collectively they impair the constitutional right of state prisoners to meaningful access to

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[2]The Secretary of Correction has authority to promulgate rules and regulations to which all state prison inmates are subject. N.C. Gen. Stat. §148-11 (1975 Supp.) He has done so and those rules and regulations are public documents on file in the office of the Attorney General. N.C. Gen. Stat. §150A-59 (1975 Supp.).

[3]With regard to the "publisher only" rule, see *Cruz v. Beto*, 405 U.S. 319, 323 (1972) (Burger, C.J. concurring: "Buddhist materials cannot be denied to prisoners if someone offers to supply them."); *Cruz v. Hauck*, 515 F.2d 322, 333 (5th Cir. 1975); *Battle v. Anderson*, 376 F. Supp. 402, 435 (E.D. Okla. 1974); *McCarty v. Woodson*, 465 F.2d 822, 826 (10th Cir. 1972); *Van Ermen v. Schmidt*, 343 F. Supp. 377, 379 (W.D. Wis. 1972); *contra*, *Hamrick v. Raines*, 376 F. Supp. 1273, 1275 (D. Kan. 1974).

the courts unless the prison system provides them a reasonable alternative. See *Battle v. Anderson*, 376 F. Supp. 402, 426 (E.D. Okla. 1974); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1972).

(B) *The Right to Access to the Courts.* Prisoners' constitutional right of meaningful access to the courts is well established in the decisions of this Court. *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974); *Procunier v. Martinez*, 416 U.S. 396, 419 (1974); *Younger v. Gilmore*, 404 U.S. 15 (1971), affirming *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970) (three-judge court); *Johnson v. Avery*, 393 U.S. 483, 483, 485 (1969); *Cochran v. Kansas*, 316 U.S. 255 (1942); *Ex Parte Hull*, 312 U.S. 546, 549 (1941). It may, indeed, be their most important constitutional right because it is necessary to the preservation of all others. *Procunier v. Martinez, supra* at 419; *Cruz v. Hauck*, 475 F.2d 475, 476 (5th Cir. 1973); *Johnson v. Anderson*, 370 F. Supp. 1373, 1383 (D. Del. 1974); *Van Ermen v. Schmidt*, 343 F. Supp. 377, 379 (W.D. Wis. 1972); Toal, *Recent Developments in Correctional Case Law* 6 (S.C. Dept. of Corrections 1975). The right to access to the courts is based in the first and fourteenth amendment right to petition all branches of government for a redress of grievances, in the fifth and fourteenth amendment guarantees of due process and equal protection of the law, and in the sixth and fourteenth amendment right to counsel. *Wolff v. McDonnell, supra* at 576, 579 (due process clause); *Procunier v. Martinez, supra* at 419 (due process clause); *Cruz v. Beto*, 405 U.S. 319, 321 (1972) (first amendment); *Younger v. Gilmore, supra*, 319 F. Supp. at 109, 111 (due process and equal protection clauses); *Andrade v. Hauck*, 452 F.2d 1071, 1072 (5th Cir. 1971) (first amendment);

Hooks v. Wainwright, 352 F. Supp. 163, 167, 168 (M.D. Fla. 1972) (first amendment, due process and equal protection clauses); Toal, *supra* at 6 (first and sixth amendments and due process clause). "No citizen, regardless of his transgressions, is ever to be legally consigned to the total and unreviewed power of any single branch of government. To make the system work, to maintain the proper checks and the proper balance, no person subject to the power of government can be denied communication with or access to each of the three spheres of governmental authority. This principle serves the highest interest of government, as much as it serves the needs of the individual." *Andrade v. Hauck*, *supra* at 1072.

This Court has long held that applications to a federal court for habeas corpus are included within the constitutional right of access to the courts. *Johnson v. Avery*, *supra* at 485. More recently, the Court held that the right of access to federal courts for lawsuits under the civil rights act, 42 U.S.C. section 1983, is also included. *Wolff v. McDonnell*, *supra* at 579. Undoubtedly, the right also encompasses access to *state courts* to seek similar relief. See *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Cochran v. Kansas*, *supra* at 258; *Banner v. Coughlin*, 517 F.2d 1311, 1320 (7th Cir. 1975) (per Stevens, J.); *Dewitt v. Pail*, 366 F.2d 682, 685 (9th Cir. 1966); *Wilson v. Zahardnick*, 40[illegible] F. Supp. 1195, 1200 (M.D. Ga. 1975); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1975); *cf., Ross v. Moffitt*, 417 U.S. 600, 616 (1974).[4] There

[4]This Court and the other federal courts have consistently used the term "access to the courts" referring to the courts generally without qualifying it by reference just to the federal courts.

are also strong arguments that it should extend as far as protecting access to the courts for problems with detainers and for general civil claims not directly related to a prisoner's confinement, such as divorce actions. *Boddie v. Connecticut*, 401 U.S. 371 (1971); see *Meltzer v. G. Buck LeCraw & Co.*, 402 U.S. 954 (1971) (opinion of Black, J.); *Corpus v. Estelle*, 409 F. Supp. 1090, 1097 (S.D. Tex. 1975); *Hooks v. Wainwright*, 352 F. Supp. 163, 167 (M.D. Fla. 1972); but compare, *United States v. Kras*, 409 U.S. 434 (1973); *Souza v. Travisono*, 498 F.2d 1120, 1123-1124 (1st Cir. 1974).

The concept of access to the courts subsumes the right to "access to the instruments needed to vindicate legal rights . . . ." *Roberts v. LaVallee*, 389 U.S. 40, 42 (1967); *Adams v. Carlson*, 488 F.2d 619, 632 (7th Cir. 1973). Thus, the right to access to the law through legal materials or alternative resources is an important aspect of the right to access to the courts. *Younger v. Gilmore*, *supra*, "(A)n inmate's right of access to the court involves a corollary right to obtain some assistance in preparing his communication with the court." *Nolan v. Scafati*, 430 F.2d 548, 551 (1st Cir. 1970); see also, *Procunier v. Martinez*, *supra* at 419 ("This means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys."). In *Younger v. Gilmore*, the three-judge court took "notice that more than simple 'facts' are needed in order to file an adequate petition for relief by way of habeas corpus" and that legal knowledge or information is also essential. 319 F. Supp. at 110. The District Court found that the same is true in the courts in North Carolina and also in cases other than habeas

corpus (presumably civil rights actions).[5] Supp. App. 4-5, 12; see also, *In re Harrell*, 86 Cal. Rptr. 504, 470 P.2d 640 (1970). "Few trained lawyers could operate with any degree of competence" without legal research materials. ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Post-Conviction Remedies*, Commentary at 51 (Approved Draft 1968). Prisoners need to know the law and the trends in the law in order to know what facts to allege and what facts are irrelevant and should be omitted so that they do not obscure the material details. Prisoners also need access to the law in order to understand and respond to the pleadings filed by the Attorney General's office in opposition to their actions, which are usually replete with citations to legal materials. Supp. App. 5. "(I)t is necessary to understand what one's rights are before it is possible to set out in a petition the facts which support them." *Johnson v. Avery, supra* at 501 (White, J., dissenting). This is true in the area of criminal law and procedure and in the area of prisoners' rights

[5] This is an area where the opinions of the District Court and Court of Appeals are entitled to great weight because they represent "expressions of essentially practical judgments on questions which those courts must confront" on a regular basis. *United States v. MacCollom*, 96 S. Ct. 2086, 2093 (1976).

Interestingly, respondents Harrington, et al. did not cite *Gilmore* or any cases in their complaint, App. 33-35, and the District Court originally dismissed their case without mentioning *Gilmore* or any of its progeny. Supp. App. 33. By contrast, respondents Smith, et al. and Morgan, et al. did cite *Gilmore* in their complaints. App. 7, 24. That was apparently what was needed to bring that case and the relevant law to the attention of the same District Court Judge, who promptly gave favorable consideration to their cases. Supp. App. 7.

which, with the relatively recent decline of the "hands-off attitude," *Procunier v. Martinez, supra* at 404-405, is a developing field of law. See *Wolff v. McDonnell, supra* at 570, 571-572. Thus, the failure of petitioners to make law books or a reasonable alternative available to their prisoners constitutes "an effective denial of access to the courts." *Knell v. Bensinger*, 489 F.2d 1014, 1017 (7th Cir. 1973).

II.

THIS COURT'S DECISION IN *YOUNGER V. GILMORE* REQUIRES THAT NORTH CAROLINA PROVIDE ITS PRISONERS ADEQUATE LAW BOOKS OR A REASONABLE ALTERNATIVE.

The District Court held that our State's failure to provide its prisoners with law books or a reasonable alternative unconstitutionally interfered with their right of access to the courts. The Court of Appeals agreed. Both relied on this Court's decision in *Younger v. Gilmore, supra. Gilmore* compels the conclusion that they reached.

(A) *The Holding in* Younger v. Gilmore. *Gilmore* involved the California prison system. California did not provide law libraries in its two maximum security prisons, and also arranged for law books in the state library to be made available for prison circulation. It decided to provide law libraries in its other prisons as well. Accordingly, it promulgated a regulation which listed a standard set of law books for each prison. At the same time the Director of the Department of Corrections in a separate Transmittal Letter ordered

that "all existing law books and references in inmate law libraries not consistent with this section are to be removed and destroyed." 319 F. Supp. at 107, n. 2.

Although the contemplated destruction of existing law books was a factor motivating the California inmates to bring suit, the scope of the litigation was broader. The inmates challenged the constitutionality of the regulation limiting the law books to be provided at each institution, and therefore a three-judge court was convened, properly so as this Court held. 404 U.S. at 15. The directive for destruction of existing law books beyond those included in the list was not part of the challenged regulation, but was in an accompanying transmittal letter. The three-judge court pointed out that the subject of the challenge before it was the regulation and that the provision for destroying law books just helped explain the regulation. 319 F. Supp. at 107.

At the time, California permitted its prisoners to help other prisoners in the preparation of legal papers. 319 F. Supp. at 107, n. 1. Compare Brief for Petitioners 5-6, 12. It also permitted prisoners to buy their own law books and other legal materials if able to do so. 319 F. Supp. at 107, n. 1. Presumably, California also expended millions of dollars for the appointment of counsel and other expenses to provide representation for indigent defendants in criminal cases. Compare Brief for Petitioners 3, n. 1. To justify the limited nature of its standard book list California cited a need for economy. 319 F. Supp. at 108. Compare Brief for Petitioners 13. It also argued that "access to the courts' has placed on prison officials only the passive, negative duty of noninterference . . . .". *Younger v. Gilmore*, No. 70-9, Appellant's Brief 19. Compare Brief for Petitioners 5-6, 8-9, 12.

California was in a stronger position in *Gilmore* to argue that it was meeting its prisoners' needs for assistance in preserving their right of access to the courts than North Carolina is. It not only permitted inmate legal assistance and inmate law book purchases, but, without court order, it was also willing to provide law libraries in all of its prisons; it sought only to restrict the number of books that it had to provide in those libraries. When it invoked considerations of economy, it did so not to justify a refusal to provide any law books at all, but simply to justify its decision as to the limits on the size of the legal collection that it would provide. By contrast, petitioners do not want to provide North Carolina prisons with any law books whatsoever, except those few now available at Central Prison.

Nevertheless, the three-judge court required California either to expand its list of law books or "to adopt some new method of satisfying the legal needs of its charges," 319 F. Supp. at 112, and this Court affirmed. The three-judge court observed: "The alternatives open to the State are legion." 319 F. Supp. at 110.

In reaching its result the three-judge court reasoned from the following "basic test":

> "(T)he asserted interest of the State in enforcing its rule is balanced against the claimed right of the prisoner and the degree to which it has been infringed by the challenged rule. Most prison regulations reflect the clear exigencies of a penal situation and the courts are justifiably reluctant to question their wisdom . . . . Other rules, though, touch upon interests of which the judiciary is more solicitous, and the burden of justifying these regulations is especially heavy. . . ."

319 F. Supp. at 109. See also, *id.*, n. 6.[6] The three-judge court emphasized that in order to prevail the prisoners must show that their right to reasonable access to the courts and the right to equal protection was "infringed to such a degree as to render the justifications offered by the State inadequate and unreasonable as a matter of law." 319 F. Supp. at 109; see also, Supp. App. 4, 6. The court then concluded that the prisoners had done so and that the State's asserted need for economy did not justify the restrictions. 319 F. Supp. at 111.

When California appealed to this Court, it did not raise any concern about being prohibited from destroying the law books that it regarded as extras. Instead, it complained only that: "The District Court held that state prison officials are under an affirmative constitutional duty to provide inmates in their charge with either extensive law library facilities or the professional assistance of attorneys or law students." *Younger v. Gilmore*, No. 70-9, Juris. Statement 6, 8, 14; *Younger v. Gilmore*, No. 70-9, Appellant's Brief i, 5, 7, 8, 15, 16, 19, 29. The question presented to this Court, as stated in the Jurisdictional Statement, Rule 15(1)(c), Supreme Court Rules, was:

[6]In *Procunier v. Martinez*, 416 U.S. 396, 420 (1974), this Court used a similar formulation of the test. See also, *Morales v. Schmidt*, 489 F.2d 1335, 1348 (7th Cir. 1973) (Stevens, J., dissenting), on rehearing en banc, 494 F.2d 85 (7th Cir. 1974). *Procunier's* formulation included explicit reference to "the proper regard that judges should give to the expertise and discretionary authority of correctional officials." *Procunier v. Martinez, supra* at 420; see also, *Cruz v. Beto*, 405 U.S. 319, 321 (1972). This was certainly part of the *Gilmore* statement of the test. For a discussion of the proper regard given to these factors by the lower courts in this case, see Argument V, *infra*.

> "Does a state have an affirmative federal constitutional duty to furnish prison inmates with extensive law libraries or, alternatively, to provide inmates with professional or quasi-professional legal assistance?"

Younger v. Gilmore, No. 70-9 Juris. Statement 5.

This Court unanimously affirmed the affirmative answer to that question given by the three-judge court. 404 U.S. 15. Although the opinion was brief and rendered per curiam, it was not decided summarily. Rather it followed full briefing and oral argument which gave thorough exposition to the issues. Even if *Gilmore* had been decided summarily, it would stand as a holding of this Court that states have an affirmative constitutional duty to furnish prison inmates with reasonable law libraries or an adequate alternative. *McCarthy v. Philadelphia Civil Service Commission*, 96 S. Ct. 1154, 1154 (1976); *Hicks v. Miranda*, 422 U.S. 332, 344 (1975); *cf., Usery v. Turner Elkhorn Mining Co.*, 44 U.S.L. Week 5181, 5185 (1976); *Massachusetts Board of Retirement v. Murgia*, 44 U.S.L. Week 5077, 5078, n. 1 (1976) (summary affirmance after only "cursory consideration" does not "foreclose this opportunity to consider more fully that question."); *Edelman v. Jordan*, 415 U.S. 651, 670-71 (1974). Because it was decided after full briefing and argument, its precendential value is strong. See *Imbler v. Pachtman*, 96 S. Ct. 984, 991 (1976). This Court has cited it favorably and relied on it in at least three cases. *Wolff v. McDonnell, supra* at 578; *Cruz v. Beto*, 405 U.S. 319, 321 (1972); *Cruz v. Hauck*, 404 U.S. 59 (1971); see also, *Chaffin v. Stynchcombe*, 412 U.S. 17, 34, n. 22 (1973). Although the Court did not expressly adopt the opinion of the three-judge court, neither did it

disclaim that opinion. *Cf., East Carroll Parish School Board v. Marshall,* 96 S. Ct. 1083, 1085 (1976). Thus, the holding of *Gilmore* is clear and its foundation in the reasoning of the three-judge court is firm.

Gilmore is an important development in the general body of law in which the federal courts have become increasingly willing "to take cognizance of valid constitutional claims" of state as well as federal prisoners, and to "discharge their duty to protect constitutional rights." *Procunier v. Martinez, supra* at 405; *Cruz v. Beto, supra* at 321. More specifically, it is part of a line of cases which serve that body of law as a beacon, facilitating voyages through its depths and lighting its shoals to permit safe passage. In that context, it stands not as a terminal decision but as one layer of an edifice under cautious but continuous construction. Its contribution to the structure was quietly heralded for years and it has been widely acclaimed since its appearance.

Twenty-five years ago, in *Ex Parte Hull, supra,* this Court embarked upon a dialogue with the states about their responsibilities in connection with the needs of their prisoners to bring grievances about their convictions and the conditions of their confinement to the attention of the courts in petitioning for their redress. Much of the initiative for raising constitutional questions in criminal procedure and most of the initiative for informing the courts about prison, parole and other penal conditions has rested with the inmates of our prisons. In *Ex Parte Hull,* this Court reminded prison authorities that the courts have a legitimate interest in those matters and declared the importance of permitting prisoners to shine the light of their understanding on the abuses that they perceive in their

own conditions. Thereafter in official and unofficial statements, in subdued and careful steps, the Court asked the states to cooperate with their prisoners in measures which would prove to be good correctional policy as well as good constitutional doctrine. See ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 364 (1974). Mr. Justice Stewart in a 1960 address to the annual meeting of the Legal Aid Society said:

> "(I)t would be of untold advantage if a way could be found to provide legal assistance at the large state and federal penitentiaries throughout the country from which most of these [*in forma pauperis*] petitions come. Our Court, and all the federal and state courts to which *in forma pauperis* appeals are directed, would be greatly aided in their work if such legal assistance could be provided. A lawyer's help would insure that meritorious claims were properly and clearly presented, and that frivolous or irrelevant contentions were eliminated."

Stewart, "The Indigent Defendant and the Supreme Court of the United States," 58 Legal Aid Review 3, 7 (1960); see also, *Houghton v. Shafer,* 392 U.S. 639 (1968); *Cochran v. Kansas, supra.*

In 1963 a committee of the Judicial Conference of the United States recommended legislation to provide legal assistance for federal and state prisoners. Report of the Committee on Habeas Corpus, 33 F.R.D. 367, 385 (1963).

In *Johnson v. Avery, supra,* the Court struck down as a denial of the constitutional right to access to the courts a Tennessee prison regulation prohibiting prisoners from helping other prisoners with the preparation of

judicial papers. The Court held that "the prisoner is, in effect, denied access to the courts unless such help is available." *Id.* at 488. Confining its decision to the facts presented to it, the Court ruled simply that the prison could not punish its inmates for violating that regulation. The Court made the breadth of its concern clear, however. It stated that prisoners are constitutionally entitled to help with their applications to the courts. Acknowledging that inmate legal assistance may be a source of problems for the prisons and for the courts, the Court also told the states "that techniques are available to provide alternatives if the State elects to prohibit mutual assistance among inmates." *Id.* at 490. The Court described some of the available techniques: attorneys on the public defender staff could include consultation with prisoners on their legal claims among their services; law students could advise inmates; and voluntary bar association programs could provide attorneys to consult with prisoners concerning their cases. *Id.* at 489.

In an opinion dissenting from the judgment upsetting the discipline of the prison writ writer, Mr. Justice White more directly stated "that the State must provide access to the courts by ensuring that those who cannot help themselves have reasonably adequate assistance in preparing their post-conviction papers." *Id.* at 502. Unless the inmate gets such help, Mr. Justice White observed, the prisoner "will be as surely and effectively barred from the courts as if he were accorded no help at all." *Id.* at 499.

Gilmore can be read consistently with either the narrow basis for *Johnson v. Avery* – that the obligation of the state is limited to overcoming its own hindrance of its prisoners' access to law books in libraries outside

the prison system – or with Mr. Justice White's view, also supported in the majority opinion, 393 U.S. at 488; see also *Wolff v. McDonnell, supra* at 577 – that without regard to whether the State is a source of interference with its prisoners' access to the courts, the prisoners have a "constitutional right to help." 393 U.S. at 502; see also, *Nolan v. Scafati,* 430 F.2d 548, 551 (1st Cir. 1970); *Cross v. Powers,* 328 F. Supp. 899, 903 (W.D. Wis. 1971). Either interpretation supports the judgment of the District Court affirmed by the Court of Appeals in this case.

(B) Younger v. Gilmore *Deserves To Be Reaffirmed By This Court.* In their certiorari petition, petitioners argued "that the only conclusion which can be drawn from the YOUNGER *per curiam* is purely negative, that a state cannot by regulation restrict the contents of prison law libraries." Petition for Certiorari 4. The foregoing discussion makes plain that such a narrow interpretation cannot be maintained. See *Wolff v. McDonnell, supra* at 578-579 (*Gilmore* "required state officials to provide indigent inmates with access to a reasonably adequate law library for preparation of legal actions.") Accordingly, in their brief petitioners prudently abandoned that position and instead called for a "fresh evaluation" of *Gilmore* to determine "whether the rule in that case should be applied to every prison in the nation or overruled as a mistake." Brief for Petitioners 11.

Such reevaluation would not be appropriate. *Gilmore* was decided unanimously after plenary consideration less than five years ago. Although the Court consisted of only seven Justices at the time, six of the Justices who joined in that decision still sit as Members of this Court.

Moreover, the developments since *Gilmore* – in the states and their prison systems, in the courts, in the literature, and in professional organizations – demonstrate the wisdom and correctness of that decision. The support for it from all quarters is overwhelming. North Carolina has little company in resisting it.

The record of compliance with *Gilmore* among the states, the Federal Government and the District of Columbia, is nearly complete, and is described in Exhibit B to this brief. West Publishing Company reported that soon after *Gilmore* was decided all but ten states had placed orders to meet its requirement. Ziegler and Herman, "The Invisible Litigant: An Inside View of Pro Se Actions in the Federal Courts," 47 N.Y.U. L. Rev. 157, 174, n. 56 (1972); see also, Werner, "The Present Legal Status and Conditions of Prison Law Libraries," 66 Law Lib. J. 259, 262, 264-266 (1973). As *Gilmore* contemplated, the modes of response have ranged from law libraries to trained inmate paralegal assistance programs to law school clinical programs to attorney legal services programs, and have included a variety of combinations of all of these. Exhibit B is a catalogue of the forms of legal assistance provided by nearly all of the states for their prisoners. The states' record of compliance with *Gilmore* which it shows argues forcefully against reevaluation of *Gilmore*. The effect of *Gilmore* has been to guarantee substantial legal assistance to the prisoners throughout most of the country. Only a handful of states would benefit from the overruling of *Gilmore* recommended by petitioners. If conferred, any such benefit would be a windfall reward for recalcitrance in abiding by the decisions of this Court. The effect on

the several states which have complied with *Gilmore* is hard to predict. Most have reported such satisfaction with their programs that they would likely continue them even without constitutional compulsion from this Court. What would it mean in the others? Some even though proud of their programs might feel discouraged if the Court were to reverse the decision in this case. They might then neglect their well maintained law libraries until the lack of up-to-date materials renders them largely useless or, worse, misleading to the prisoners. Others might neglect their paralegal training of inmates. Others might let their law student or lawyer legal service programs lapse. What reasons do petitioners offer for asking the Court to give possible encouragement to such results?

Gilmore has received the support of all the circuits which have had occasion to deal with it: the First Circuit, in *Souza v. Travisono*, 498 F.2d 1120 (1st Cir. 1974); the Third Circuit, in *Bryan v. Werner*, 516 F.2d 233 (3d Cir. 1975); the Fourth Circuit, in this case, and in *Vette v. Virginia Department of Corrections*, 529 F.2d 518 (4th Cir. 1976) (unpublished opinion); *Jarvis v. North Carolina*, No. 73-2094 (4th Cir. 1974) (unpublished memorandum decision); the Fifth Circuit, in *Stevenson v. Reed*, 530 F.2d 1207 (5th Cir. 1976), affirming 391 F. Supp. 1375 (N.D. Miss. 1975); *Cruz v. Hauck*, 515 F.2d 322 (5th Cir. 1975); *Hooks v. Wainwright*, 457 F.2d 502 (5th Cir. 1972); *Novak v. Beto*, 453 F.2d 661 (5th Cir. 1971); the Seventh Circuit, in *Knell v. Bensinger*, 522 F.2d 720, 726 (7th Cir. 1975), after prior decision at 489 F.2d 1014 (7th Cir. 1973); *Black v. Brown*, 513 F.2d 652 (7th Cir. 1975); *Adams v. Carlson*, 488 F.2d 619, 632 (7th Cir. 1973); the Eighth Circuit, in *Kirby v. Ciccone*, 491

F.2d 1310 (8th Cir. 1974); *Noorlander v. Ciccone*, 489 F.2d 642 (8th Cir. 1973); the Ninth Circuit, in *Gaglie v. Ulibarri*, 507 F.2d 721 (9th Cir. 1974); *Mead v. Parker*, 464 F.2d 1108 (9th Cir. 1972); the Tenth Circuit, no cases, but see the District Court decision in *Battle v. Anderson*, 376 F. Supp. 402 (E.D. Okla. 1974); and the District of Columbia Circuit, in *United States v. Simpson*, 436 F.2d 162 (D.C. Cir. 1970).[7] The

[7]Petitioners cite only two cases *contra*: *Hatfield v. Bailleaux*, 290 F.2d 632 (9th Cir. 1961); *Farrington v. North Carolina*, 391 F. Supp. 714 (M.D. N.C. 1975).

In *Farrington*, the District Court observed: "The appointment of counsel to advise with prisoners and prepare and file meritorious actions would be far more beneficial than providing them with law libraries." 391 F. Supp. at 720. Then, interpreting *Gilmore* exceedingly narrowly, it held that North Carolina need not establish prison law libraries because "(i)t has not embarked upon the hazardous task of furnishing 'adequate' law libraries, with 'adequate' access, 'adequate' circulation, and with 'adequate replacement procedures.'" 391 F. Supp. at 720. That is the only federal case expressing disapproval of *Gilmore*, and it directed its criticism only at law libraries while expressing approval of legal assistance programs. To the extent that it refused to require North Carolina to provide at least law libraries in its prisons, it was effectively overruled by the Court of Appeals decision in this case.

Hatfield was decided ten years before *Gilmore*. It recognized the constitutional right of access to the courts and that this right included access to the state courts, 290 F.2d at 636, but it upheld prohibitions against inmate legal assistance for other inmates, and to that extent was overruled in *Johnson v. Avery*, *supra*. It also held that a state could deny prisoners all access to the courts or to legal material while in disciplinary isolation for periods of time ranging from two to twenty-seven days, and could limit the time that prisoners could spend in the law library and prohibit them from keeping legal materials in their cell. See *Johnson v. Avery*, *supra* at 490. In dictum, the court observed:

(continued)

federal courts have found satisfaction in the improved quality of petitions prepared by attorneys and inmate paralegals. *McDonnell v. Wolff*, 342 F. Supp. 616, 621 (D. Neb. 1972); *Novak v. Beto*, 320 F. Supp. 1206, 1210 (S.D. Tex. 1970); Jacob and Sharma, "Justice After Trial: Prisoners' Need for Legal Services in the Criminal- Correctional Process," 18 Kan. L. Rev. 493, 593 (1970). There is evidence that giving prisoners access to law libraries or legal services reduces the number of frivolous petitions and increases the quality of those petitions that are filed. Consortium of States to Furnish Legal Counsel to Prisoners, "Final Report, LEAA Grant 75 OF-99-0013" 14 (1975); Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 520-521, 602; LeDonne, *Survey of Library and Information Problems in Correctional Institutions* (H.E.W. Office of Education 1974), vol. 2 at 11; Meyer, "The Defender Project," The KU Laws 5, 9 (Fall 1973); Norman, "Civil Legal Services to Prison Inmates," 48 Fla. B.J. 736, 738 (1974); Wilson, "Legal Assistance Project at Leavenworth," 24 Legal Aid Brief Case 254, 259 (1966); Note, 1968 Duke L.J. 343, 359.

(footnote continued from preceding page)

"State authorities have no obligation under the federal Constitution to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held . . . ." 290 F.2d at 640. (The case may have involved prisoners who wanted access to legal materials for cases in which they had been offered and waived counsel. See 290 F.2d at 641.) This dictum was expressly rejected by the three-judge court in *Gilmore*. California continued to urge that dictum before this Court, *Younger v. Gilmore*, No. 70-9, Appellant's Brief 17, but without success. Ninth Circuit law is now, of course, inconsistent with that dictum. *Gaglie v. Ulibarri*, 507 F.2d 721 (9th Cir. 1974).

Professional organizations of lawyers, librarians and correctional administrators and other concerned groups reacted quickly to support *Gilmore* and to assist in its implementation. Although most, like the lower courts in this case, prefer that a state provide both legal services and law libraries than one or the other, and prefer legal services over law libraries, they strongly support the need for prison law libraries at a minimum. *Gilmore* spurred the American Library Association to form a Task Force on Prison Library Service. LeDonne, *supra*, vol. 1 at 1-2. The American Association of Law Libraries established a committee to prepare a recommended list of the contents of a prison legal collection, to make recommendations to individual states, and to compile a directory of law libraries which provide services to prisoners. LeDonne, *supra*, vol. 2 at 5.

The American Correctional Association (ACA) also created a Subcommittee on Legal Reference Materials. LeDonne, *supra*, vol. 2 at 5. It proposed a conference on the subject which was held in May, 1972. LeDonne, *supra*, vol. 1 at 2; 36; vol. 2 at 2, 5. Out of this conference came the *Guidelines for Legal Reference Service in Correctional Institutions: A Tool for Correctional Administrators*, which was formally approved by the ACA in 1972 and published in 1973. LeDonne, *supra*, vol. 2 at 5. A second edition was published in 1975. The ACA has also adopted library standards for prisons which provide that, because legal counseling is not available in an adequate supply, law libraries are essential in prisons. ACA Committee on Institution Libraries, *Library Standards for Adult Correctional Institutions* 10-13 (1974). Individual correctional administrators have also expressed their approval. Bluth, "Legal Services for Inmates: Coopting

the Jailhouse Lawyer," 1 Capital U.L. Rev. 59, 61, 67 (1972); Cardarelli and Finkelstein, "Correctional Administrators Assess the Adequacy and Impact of Prison Legal Services Programs in the United States," 65 J. Crim. L. and Criminology 91, 94-102 (1974); Connecticut Department of Correction, *Legal Assistance to Prisoners* 4-5; Kansas Legal Service for Prisoners, Inc., *The Facts About Legal Services for Prisoners* (1975 Report); Walsh, "Jailhouse Lawyers: The Texas Department of Corrections Revokes Their License," 1 Capital U.L. Rev. 41, 56 (1972); *Carter v. Lally*, Civil No. 72-642-K (D. Md.), Affidavit of William P. Statsky at 3 ("I conducted an extensive survey of prisons in America which offered legal services to fellow inmates. My contact with wardens and other administrators revealed substantial support for the concept of inmate as paralegal not only as a way of providing services but also as preparation for a new career in law once released."); see generally, Carlson, "Corrections in the United States Today: A Balance Has Been Struck," 13 Am. Crim. L. Rev. 615, 635-639, 646-647 (1976).

Also, "West Publishing Company prepared recommended lists of materials for each state and agreed to provide training sessions in the use of the packaged collections." LeDonne, *supra*, vol. 2 at 6. The American Association of Law Libraries, through its Committee on Law Library Service to Prisoners, has embarked on a long-range program "for one or more consulting law librarians in each state to act as continuing consultants to librarians in prison law libraries of the state." Werner, *Manual for Prison Law Librarians* 5 (Fred B. Rothman and Co. 1976). Mr. Werner's recently published book for the American Association of Law Libraries is itself a service for prison law librarians.

The United States Government has also lined up squarely behind *Gilmore*. In an amicus curiae brief filed in the still pending case of *Hooks v. Wainwright*, Nos. 71-1011-Civ-J-S, 71-144-Civ-J-S (M.D. Fla.) after the interim decision in that case published in 352 F. Supp. 163 (M.D. Fla. 1972), the Government took the position that "meaningful access to the courts for indigent inmates of the Florida penal system requires both reasonably comprehensive prison law libraries and adequate legal services." *Hooks v. Wainwright, supra,* Post Hearing Memorandum of the United States 6. The Government made clear that it believed that even if legal services are provided, "reasonably comprehensive law libraries must also be provided." *Id.* at 15. The United States Bureau of Prisons provides law libraries in all of its prisons, Policy Statement 2001.2B, 1 Pris. L. Rptr. 243-245 (1972) and legal services programs in most. *United States v. Simpson,* 436 F.2d 162, 168-169 (D.C. Cir. 1970); *Stevenson v. Reed,* 530 F.2d 1207 (5th Cir. 1976), Affidavit of Eugene N. Burkin, General Counsel of the United States Bureau of Prisons, dated December 20, 1973, R. Vol. 1, 137-138.

This position is consistent with the position taken by two national commissions, one in 1967 and the other in 1973. President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Corrections* 84 (1967); National Advisory Commission on Criminal Justice Standards and Goals, *Report on Corrections* 26-30 (1973). The National Advisory Commission was established by the Law Enforcement Assistance Administration (LEAA) and the standards it promulgated provide for law libraries in all prison facilities with a design capacity of 100 or more (standard 2.3) and also for legal assistance for prisoners

by attorneys assisted by law students or paraprofessionals (standard 2.2). LEAA has invested substantial sums of money in the states to back up those recommendations. See Exhibit B. LEAA has found that "The need for prison legal services is confirmed in the literature, in the results of our own empirical research, and in the views of a national sample of correctional personnel and law schools." Finkelstein and Krantz, *Perspectives on Prison Legal Services: Needs, Impact and the Potential for Law School Involvement* 1 (LEAA Summary Report 1972).

The American Bar Association (ABA) has also given enthusiastic support to *Gilmore*. Even before *Gilmore* was decided the ABA took a position in favor of the states providing prisoners a law library, counselling by lawyers or law students, and specifically-prepared pamphlets or brochures outlining the relevant law in a manner understandable to the prison population. ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Post-Conviction Remedies* 49-52 (Approved Draft 1968) (standard 3.1); see also, ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Providing Defense Services* 40-43 (Approved Draft 1968) (standard 4.2). Inspired by Mr. Chief Justice Burger, see ABA Young Lawyers Section, *Behind the Bars: A Report to the Chief Justice of the United States Supreme Court* (1975), the ABA is strengthening its support. Its Joint Committee on the Legal Status of Prisoners has adopted a tentative draft of standards concerning the situation of those confined as a result of criminal justice system processing. Tentative standards 2.1, 2.2 and 2.3 deal with the general subject of "Access to the Courts, Legal Services

and Legal Materials." Following closely the recommendations of the National Advisory Commission, the new proposed standards call for states to provide law libraries in their prisons and also to provide legal assistance programs for their prisoners staffed by attorneys or trained paraprofessionals under the supervision of an attorney. The ABA has also supported its position financially. Its Commission on Correctional Facilities and Services in 1972 created the Resource Center on Correctional Law and Legal Services and in 1974 created a program called Bar Association Support to improve Correctional Service (BASICS). Through the BASICS program, the ABA provides funds to state and local bar associations for several programs, among which prison legal services programs are one of three priority areas. Grants for this purpose have been provided to several bar associations. ABA, *BASICS* (1976); ABA, *BASICS* II (1975). See generally, ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 374, 375, 422 (1974).

Similar support has come from other organizations. See Annual Chief Justice Earl Warren Conference on Advocacy in the United States, "A Program For Prison Reform; the Final Report" 15, Recommendation XVI (The Roscoe-Pound-American Trial Lawyers Foundation 1972); Krantz, Bell, Brant and Magruder, *Model Rules and Regulations on Prisoners' Rights and Responsibilities* 207-209 (West 1973); National Commission on Uniform State Laws, *Uniform Corrections Act* §2-601 (Proposed Code).

III.

NORTH CAROLINA DOES NOT PROVIDE ITS PRISONERS LAW BOOKS OR A REASONABLE ALTERNATIVE.

North Carolina does nothing to help its prisoners overcome the obstacles which incarceration imposes on their access to the courts. The District Court so found. Supp. App. 6, 10-11. The Court of Appeals agreed. Petition for Certiorari 19. Petitioners nevertheless contend that North Carolina does provide alternatives to law libraries for their prisoners in the following forms: (a) it provides counsel to represent indigent defendants at trial and on their first appeal, Brief for Petitioners 3, n. 1, 8, 22; (b) it provides counsel to represent indigent prisoners in state post-conviction proceedings, Brief for Petitioners 14, n. 9; and (c) it provides an Inmate Grievance Commission, Brief for Petitioners 14.

Point (a). The right of criminal defendants to the assistance of counsel in trials and first stage appeals has been developed in a distinct line of cases, *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Douglas v. California*, 372 U.S. 353 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963), and the courts have customarily used the phrase "access to the courts" in a narrow sense which does not include these situations. Only the needs of prisoners for access to the courts after their conviction and first appeal are involved in this case. For this reason, the State's expenditures for appointed counsel are not relevant. They are total expenditures for appointment of counsel generally and not for assistance to prisoners in proceedings which are part of the specific concept of access to the courts which is involved in this case.

Point (b). This Court has already taken notice that North Carolina's statutory provisions for appointed counsel are not construed as broadly as they appear on their face. *Ross v. Moffitt*, 417 U.S. 600, 614 (1974). As is generally the case with such statutes in post-conviction proceedings, the court appoints counsel only after first making an initial screening determination, according to uncertain criteria, that such appointment is justified in the particular case. Supp. App. 23; Exhibit A at 4; *Perkins v. North Carolina*, 234 F. Supp. 333, 334-335 (W.D. N.C. 1964); Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 518; see also, *Johnson v. Avery*, *supra* at 488 (1969). Before a prisoner can take advantage of this statute, then, he or she must present to the court a case sufficiently compelling in its initial documentary appearance to overcome this hurdle. The right to access to the courts comes into play primarily at this preparation stage, *Wolff v. McDonnell*, *supra* at 576 (1974), and at this critical time North Carolina provides its prisoners with no assistance. *Cf.*, *Johnson v. Avery*, *supra* at 487, n. 6.

Point (c). Our Inmate Grievance Commission, while a welcome resource, see Burger, "Our Options Are Limited," 18 Vil. L. Rev. 165, 171 (1972), can help prisoners, if at all, only with grievances against the institution and not challenges to their convictions. Even in that area it is limited to making recommendations to the Secretary of Correction, and cannot assist inmates with the preparation of court papers to gain access to the courts. Moreover, the Commission has the authority only to make recommendations, not decisions. By statute, the final decision on any grievance remains with the Secretary of Correction who "shall affirm the order of the Commission, or shall reverse or modify the order

if he disagrees with the findings and conclusions of the Commission." N.C. Gen. Stat. §148-106(2)(1975 Supp.). The Department of Correction need not, therefore, pay any attention to the Inmate Grievance Commission, and the Secretary has in fact rejected most of the Commission's orders. Conclusions about the effectiveness of the Commission depend upon information about its receptivity to grievances and about the Department's willingness to abide by or even be guided by Commission recommendations. Petitioners have provided no such information.

Thus, North Carolina provides its prisoners no legal assistance in the preparation of state or federal collateral attacks on their convictions, in the preparation or pursuit of state or federal actions challenging the conditions of their confinement, or in the resolution of detainers filed against them, or any other matters.

Petitioners argue that the fact that some of the respondents have filed many court actions shows that petitioners "have not deprived the Respondents of their access to the Courts." Brief for Petitioners 8. That information might be relevant if respondents were charging that petitioners had prevented them from communicating with the courts in the manner outlawed in *Ex parte Hull*, 312 U.S. 546 (1941). But, as the District Court held, "Access does not mean the ability to file petitions or suits, but it rather means the ability to file *meaningful* petitions and suits." Supp. App. 5. "(A)ccess to the courts by prison inmates must be more than mechanical access; it must be meaningful access." Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners 6.

As petitioners assert, "the North Carolina Department of Correction has no regulations prohibiting mutual legal assistance . . . ." Brief for Petitioners 3, 6, 9. That does not mean, however, that inmates capable of providing such assistance and willing to do so are available to the prisoners at each of the State's prison units. *Cf., Bryan v. Werner*, 516 F.2d 233, 236-237 (3d Cir. 1975); *Stevenson v. Reed*, 391 F. Supp. 1375, 1378 (N.D. Miss. 1975), aff'd, 530 F.2d 1207 (5th Cir. 1976). It also does not mean that the State takes any steps to encourage or facilitate such assistance or to assure that such help is accessible to every inmate who needs it. There is irony in petitioners' contending that by tolerating inmate legal assistance they satisfy their constitutional obligation while also maintaining that their inmates are "untrained individuals with neither an understanding nor respect for the law . . . ." Brief for Petitioners 22. Not even the most accomplished writ writer, no more than a skilled attorney, could be expected to function properly without legal research materials. Moreover, the fact that there is no regulation against prisoners providing such assistance does not mean that prison administrators do not take discretionary steps such as administrative transfers to discourage it. See *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975); *Jarvis v. North Carolina*, No. 73-2094 (4th Cir. 1974) (unpublished memorandum decision), slip opinion at 4.

In their certiorari petition, petitioners argued that "legal assistance is also made available to inmates through the various legal aid societies of the State of North Carolina, the North Carolina Civil Liberties Union, the Prison Research Counsel, Law School Habeas Corpus and Constitutional Law Seminars,

various voluntary associations of attorneys and law students . . . ." Petition for Certiorari 11. This assertion was false and without support in the record. Wisely, petitioners abandoned it in their brief.

Thus, the findings of the courts below that North Carolina provides its prisoners with no legal assistance in the preparation of their court actions are not "clearly erroneous." Rule 52(a), Federal Rules of Civil Procedure. In this respect our State can be counted among only a handful of states that have ignored this constitutional responsibility. Unlike the overwhelming majority of states, North Carolina provides its prisoners no legal services beyond trial and the first appeal (unless a state court judge decides to appoint counsel for a prisoner who has filed a post-conviction petition), no programs for law students or other legal paraprofessionals to assist its inmates, no training or education in legal matters for any of its inmates and no law books in seventy-nine of its prison units and only a few in its maximum security unit. North Carolina has refused to provide any such assistance in spite of this Court's decision in *Younger v. Gilmore, supra*, and the Court of Appeals decision in *Jarvis v. North Carolina*, No. 73-2094 (4th Cir. 1974) (unpublished memorandum decision) (holding that a North Carolina prisoner's allegation that he is provided no law books "states a claim for relief if the prison system offers no adequate alternative.").

IV.

NORTH CAROLINA HAS OFFERED NO SATISFACTORY JUSTIFICATION FOR ITS FAILURE TO COMPLY WITH *YOUNGER V. GILMORE* BY PROVIDING ITS PRISONERS ADEQUATE LAW BOOKS OR A REASONABLE ALTERNATIVE.

Petitioners offer only one justification for their failure to comply with *Gilmore:* that the cost would divert scarce funds from what the North Carolina General Assembly and the Department of Correction "no doubt consider more valuable programs." Brief for Petitioners 13. This generalized justification was explicitly rejected in *Gilmore.* See also, *Hooks v. Wainwright,* 352 F. Supp. 163, 168 (M.D. Fla. 1972). It deserves no greater consideration in this case.

Many decisions of this Court proclaim the principle that "constitutional requirements are not, in this day, to be measured or limited by dollar considerations . . . ." *Jackson v. Bishop,* 404 F.2d 571, 580 (8th Cir. 1968) (per Blackmun, J.). *E.g. James v. Strange,* 407 U.S. 128, 141-142 (1972); *Argersinger v. Hamlin, supra* at 37; *Boddie v. Connecticut, supra* at 381-382; *Williams v. Oklahoma City,* 395 U.S. 458 (1969); *Gardner v. California,* 393 U.S. 367 (1969); *Roberts v. LaVallee, supra* at 42; *Long v. District Court,* 385 U.S. 192, 194 (1966); *Douglas v. California, supra*; *Smith v. Bennett,* 365 U.S. 708, 709 (1961); *Burns v. Ohio,* 360 U.S. 252 (1959); *Griffin v. Illinois,* 351 U.S. 12 (1956). This Court has permitted a state to take economic considerations into account only after the Court first found that the state was not constitutionally required to provide the benefit involved. *Ross v. Moffitt, supra*

at 618; see also, *United States v. MacCollom,* 96 S. Ct. 2086 (1976); *Argersinger v. Hamlin, supra* at 62 (Powell, J., concurring). "Where state institutions have been operating under unconstitutional conditions and practices, the defenses of fund shortage . . . have been rejected by the federal courts." *Gates v. Collier,* 501 F.2d 1291, 1319, 1320 (5th Cir. 1974). "(A) state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget." *Pugh v. Locke,* 18 Cr. L. Rptr. 2370, 2371 (M.D. Ala. 1976).

If there may be a situation in which the economic condition of the state treasury and the competing demands for its resources are to be taken into account, it is not presented in this case. Petitioners are not asking the Court to take account of its limited resources in determining the *extent* to which it must provide its prisoners with law books or an alternative form of assistance in their access to the courts. Instead, they are asking the Court – for this economic reason alone – to permit them to do *nothing* in this regard. Moreover, they do so with only a cursory conclusion that "the State's resources, especially at the present time, are sharply limited . . . ." Brief for Petitioners 13. They have presented no information about either the costs involved in their plan for providing law library facilities in their prisons, the resources available to meet those costs, or the competing programs which they consider more valuable.[8] Petitioners have failed to make a case that the law libraries contemplated by their plan are beyond their means. Simply by stating that they

[8] In the Conclusion to their brief, petitioners assert that our State "has not yet found itself financially able to provide such extensive legal research facilities" to its judges or district attorneys. Brief for Petitioners 22. If it is true that the judges do not have access to the laws and decisions, the prisoners' need for

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cannot afford to meet their constitutional obligation they hope to be excused by this Court from doing so.

Constitutional rights would be ephemeral indeed if they depended on a state's subjective budgetary assessments. If financial considerations are ever to play a role in the determination of the existence of constitutional rights or the extent of a state's duty to provide for them, surely this Court as the guarantor of those rights must independently review the state's budgetary determinations. Such a review in this case would involve a multitude of factors.

First, the Court would have to assess the costs involved. Keeping in mind that the District Court permitted the State to determine which of the variety of alternatives available to satisfy the need of its prisoners for help in their access to the courts it would implement, the Court should also inquire whether any of the alternatives not chosen would be less expensive. Although petitioners have not provided any cost figures,[9] it is apparent that the plan that they

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law books is even more acute because the judges are then dependent upon the litigants before them to instruct them on the law. But the judges and district attorneys do have libraries provided them—partly through LEAA grants, Petition for Certiorari 10-11—and also have access to the more complete libraries listed in footnote 1.

[9]In 1974, the Department of Correction prepared an application to LEAA for federal financial support for the implementation of its plan for prison law libraries approved by the District Court. A copy of that application is attached to this brief as Exhibit A. In it, the Department of Correction represented that the total cost for initial purchase of the law library facilities contemplated by the plan—including a librarian, training, travel, supplies, equipment and books would be $72,265. Exhibit A at 10. The figures for books alone were $4,082.42 for each of the seven main libraries and $276.50 for each of the five core libraries, or a total for books of $29,959.44. Exhibit A at Attachments D-1 and D-2.

submitted to the District Court was an economic compromise. They chose not to provide their prisoners with the assistance of lawyers or non-inmate legal paraprofessionals. Instead, they chose to provide only law books, and they decided not to provide those at all of their facilities but only at a select few of them to be located presumably where they can efficiently service the prisoners in the rest. Thus, costs were kept to a minimum, and the lower courts approved the plan with minor modifications. There are ways in which even this cost could be reduced. For example, the Connecticut Department of Corrections has provided so much of the material in its law libraries as is in the public domain on microfilm. Connecticut Department of Corrections, *Legal Assistance to Prisoners* 5-8 (1975). It has found that for approximately $1,000, including the microfilm reader and 39 film cartridges with a total of 150,000 pages, "a single institution can be outfitted with a fairly comprehensive set of legal, statutory and case law, plus related materials." *Id.* at 6, 8. A system using microfilm or microfiche has advantages not only of cost but also of space-saving and security. *Id.* at 6; see also, ABA Young Lawyers Section, *Behind the Bars; A Report to the Chief Justice of the United States Supreme Court* 15 (1975); LeDonne, *supra*, vol. 1 at 37, vol. 2 at 7-8, 10. It is clear that the cost to the State of meeting this constitutional obligation is not exorbitant.

Turning to the resources available to the State to meet these costs, petitioners neglected to mention that they contemplate using federal LEAA funds to pay ninety percent of their initial investment in the library facilities, ninety percent of their expenses for the first year, and a portion of the substantially reduced expenses for the following year. See Exhibit A.

Pursuant to 42 U.S.C. sections 3750 et seq., LEAA has provided substantial funding for most of the states to install law libraries or legal services programs in their prisons. LEAA, *A Compendium of Selected Criminal Justice Projects* III-201, IV-360 to IV-368 (1975); Le Donne, *supra,* vol. 2 at 59, vol. 3 at 5, 6, 10, 18, 29, 39, 42, 65; ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 401-402, 403, n. 126, 407 (1974); see Exhibit B. The Public Library Services and Construction Act also provides federal funds for library services in state institutions such as prisons. 20 U.S.C. §351, 351(a)(9), et seq.; see LeDonne, *supra,* vol. 1 at 2, 11, vol. 3 at 15, 16, 24. In addition, private funding sources such as the Ford Foundation's Council on Legal Education for Professional Responsibility, Inc. (CLEPR) have helped finance law school clinics providing assistance to prisoners. See CLEPR, *Survey and Directory of Clinical Legal Education* 58-74 (1976).

Petitioners' argument that they lack the funds to do their constitutional duty, if tenable at all, is untenable in light of the LEAA and other outside money that has been made available for this purpose and their own plans to take advantage of it. *Gates v. Collier,* 501 F.2d 1291, 1230 (5th Cir. 1974). Even if they had to rely exclusively on the State's own resources, however, and if the Court were inclined to give any credence to their contention that it could not afford to provide for its prisoners' constitutional needs, the Court would have to evaluate the budgetary considerations asserted by the State. These are matters that the Court should not, in respondents' view, have to study but it is hard to see how the Court could avoid this responsibility if it were

to consider this argument.[10] The conclusion from this discussion is that petitioners' invocation of considera-

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[10]Matters relating to the State's fiscal policies such as the following chosen at random from the multitude of possible questions might become relevant if the Court were to pursue the argument based on lack of funds:

(a) *Revenue raising.* (1) Although North Carolina imposes a retail sales tax of two percent on the sale of any motor vehicle (by contrast with a general retail sales tax of three percent) it limits "the maximum tax with respect to any one such aircraft, railway locomotive, railway car or motor vehicle or boat, including all accessories attached thereto" to one hundred and twenty dollars, thereby taxing only the first $6,000 of the purchase price of any such vehicle. N.C. Gen. Stat. §105-164.4 (1975 Supp.). Should the Court consider whether North Carolina can plead relative poverty as an excuse for not meeting its constitutional obligations while it exempts from its sales taxes the value in excess of $6,000 of the expensive cars, airplanes and boats bought for business or pleasure in the State? (2) North Carolina is one of few states in the country and one of only two states in the Southeast which exempts corporations whose annual taxable income does not exceed $1.67 million from its current tax system. N.C. Gen. Stat. §§105-130.19, 105-163.25 to 105-163.30 (1972); see Turnier, "A Meaningful Corporate Estimated Income Tax for North Carolina" (1976) (report submitted to the General Assembly). Should the Court take into consideration the fact that the North Carolina General Assembly failed in its 1976 session to pass Senate Bill 961 which would have reduced the threshold annual tax limit so as to require most corporations to declare and pay in quarterly installments an estimated annual income tax, and thereby yield to the State a one-time windfall in excess of one hundred million dollars? See Turnier, *supra* at 1.

(b) *Expenditures.* (1) A candidate for the position of state auditor recently pointed out in a public statement that during the period from January, 1973 to June, 1975, the Department of

(continued)

tions of economy is inadequate as a justification for its failure to meet its constitutional responsibilities.

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Correction changed a number of direct service positions – including correctional and probation officers – to administrative positions – including a photographer, a special assistant to the secretary, several stenographers and accounting clerks. Statement of Lillian Woo (January 12, 1976). Should the Court decide whether these changes represent a commitment to "more valuable programs," Brief for Petitioners 13, than the legal assistance program mandated by constitutional considerations? (2) The Department of Correction has had twenty million dollars in funds designed for new construction on hand and unspent (despite the present overcrowding) since the time of the District Court order in this case in 1974. Chapel Hill Newspaper, page 11 (June 1, 1976); Durham Morning Herald, page 12A (June 2, 1976). Should this Court take the availability of these funds into account? (3) Overriding the thoroughly studied and strongly held position of the governing board of the University of North Carolina, Minutes of November 16, 1973 meeting of the U.N.C. Board of Governors, the North Carolina General Assembly in 1974 directed the Board of Governors to develop a second state medical school at East Carolina University and appropriated seven and one-half million dollars as an initial outlay towards that goal. Ch. 1190, §§2,46, N.C. Session Laws of 1973 General Assembly (1974 Session). The Carnegie Commission on Higher Education, in agreement with the Board of Governors, recently found that the medical school is unnecessary. Carnegie Council, *The States and Higher Education* (Jossey Bass 1976). Should the Court become embroiled in the political dispute regarding this investment?

Respondents repeat that we do not think these matters are appropriate for federal court consideration. We list them only to illustrate the kinds of factors that would be implicated if the Court were to consider the State's argument that it cannot afford to provide for its prisoners' constitutional rights.

V.

THIS COURT IN *YOUNGER V. GILMORE* AND THE LOWER COURTS IN THIS CASE ACCORDED PROPER REGARD TO THE EXPERTISE AND DISCRETIONARY AUTHORITY OF CORRECTIONAL OFFICIALS.

Petitioners argue that *Gilmore* and the lower court decisions in this case failed to accord the "proper regard that judges should give to the expertise and discretionary authority of correctional officials." Brief for Petitioners 15. They do not suggest, however, what expertise or discretionary authority they are alluding to. If it is the expertise and discretion in making decisions about allocation of available funds the point has just been answered. If it is expertise and discretion in choosing among the different methods for meeting this constitutional duty, the lower courts in this case as in *Gilmore* accorded almost total discretion to the prison authorities in that regard. Supp. App. 12-13. At one point in their brief, petitioners argue that if required to provide law libraries in their prisons "the States will be forced to think twice before opening numerous small facilities designed, such as in the State of North Carolina, to keep prisoners as close as possible to family and community where rehabilitation can most easily be accomplished." Brief for Petitioners 13. Respondents recognize that this system of establishing prison units in many communities, a carryover from the days when each county was responsible for housing its own prisoners, now serves the salutary purpose of permitting some prisoners to be housed near their home

communities. Respondents would not want to jeopardize this regional nature of the North Carolina prison system and nothing in the order under review does so. On the contrary, the District Court approved a plan submitted by the State and tailored to accommodate the system of small prison units. See Supp. App. 12; *cf., Procunier v. Martinez, supra* at 420; *Stevenson v. Reed, supra*, 391 F. Supp. at 1383; *Hooks v. Wainwright, supra*, Post-Hearing Memorandum of the United States 7-8, 31, n. 61. The State's policy in this regard is carefully preserved, and respondents make no showing otherwise.

Petitioners suggest in their brief that they have made a judgment that prison law libraries are "non-essential services," Brief for Petitioners 13, and that their prisoners are "untrained individuals with neither an understanding nor respect for the law." Brief for Petitioners 22. The first response to this argument is that the choice of law libraries as the means by which it would meet the constitutional needs of its prisoners was made by petitioners, not by the District Court. Indeed, the District Court expressed a personal preference for "an independent attorneys office as well as a law library program." Supp. App. 19, 24. Petitioners have steadfastly stood by their determination to provide only law libraries instead, and should therefore not be heard to complain that the alternative they chose is not a meaningful one. If that is true, their obligation is to develop a program that will be meaningful to their inmates. *Johnson v. Avery, supra* at 490.

The second response is that the Department of Correction has in fact made a determination that the law library facilities will be useful, a judgment which

has considerable support. In its 1974 LEAA grant application, the Department advised the federal government that its proposed law library project was "expected to benefit all inmates within the State Corrections System .... It will also be useful to Corrections' personnel in that they for the first time will have access to legal materials." Exhibit A at 1. It further represented:

> "The Department of Correction intends that the inmate shall not only have access to the court, he shall have meaningful and effective access to the court .... (T)he ultimate result of this program should be a diminution in the number of groundless petitions and complaints filed in the state and Federal courts. The inmate himself will be able to determine to a greater extent whether or not his rights have been violated, and when he submits a petition to the courts which has on its face some merit, the court will be able to appoint counsel in those cases requiring it."

Exhibit A at 4. The Department specifically identified three of the performance objectives of its law library project as:

> "To reduce the number of frivolous civil rights petitions by fifty percent; .... To reduce the number of rejected habeas corpus petitions; ... To increase the quality of all inmate petitions submitted."

Exhibit A at 4, 6.

The law is no longer concealed from the untrained in the same esoteric manner that such as Benjamin Austin, writing under the pseudonym "Honestus," criticized in the infant years of our nation. See Ellis, *The Jeffersonian Crisis* 111-116 (Oxford 1971). Contemporary simplification of legal language and the resulting

clarification of many concepts previously obfuscated by complex or technical phraseology has placed within the reach of laymen a basic comprehension of some legal subjects. This is especially true for laymen who concentrate their law study on a single subject such as criminal law or prisoners' rights. There has also been a proliferation of books, classes and training programs designed to provide non-lawyers with some education in legal matters. Thus, courses in legal subjects are not uncommon today in colleges, in university undergraduate curriculums and in business schools. The increasing popularity, success and professional acceptance of legal paraprofessionals further illustrates the point.[11]

The libraries contemplated by the plan submitted to the District Court by petitioners, in addition to basic legal sources, contain reference books to help prisoners acquire an understanding of the relevant fields of law and particular subjects of their interest, and to help them find their way into the basic materials. These include: Strong, *North Carolina Index* (Lawyers Co-op. 2d ed.); Sokol, *Federal Habeas Corpus* (Michie 2d ed. 1969); LaFave and Scott, *Criminal Law* (West 1972); Palmer, *Constitutional Rights of Prisoners* (Anderson 1973). Supp. App. 15-16. There are many others which the Department through its librarian might administratively choose to augment those research aids. These

[11]See generally, *Procunier v. Martinez*, 416 U.S. 396, 419-420 (1974); ABA Special Committee on Legal Assistants, *News Careers in Law II* 26-43 (Conf. Report 1971); Statsky, *Introduction to Paralegalism* 1-95 (West 1974).

include several criminal law,[12] criminal procedure,[13] and prisoners' rights[14] casebooks. They also include books which explain criminal and correctional law in a way that lay prisoners might understand it, such as West Publishing Company's "Nutshell" series[15] or books designed for college undergraduate courses.[16] There is also, of course, instructional material in legal research

[12]For example, Dix and Sharlot, *Criminal Law* (West 1973); Inbau, Thompson and Moenssens, *Criminal Law* (Foundation 1973); Kadish and Paulsen, *Criminal Law and Its Processes* (Little, Brown 3rd Ed. 1975); Vorenberg, *Criminal Law and Procedure* (West 1975); Weinreb, *Criminal Law* (Foundation 1975).

[13]For example, Goldstein and Orland, *Criminal Procedure* (Little, Brown 1974); Inbau, Thompson, Haw[illegible]d, Zabel and Starkman, *Criminal Procedure* (Foundation 1974); Kadish and Paulsen, *Criminal Law and Its Processes* (Little, Brown 3d Ed. 1975); Kamisar, LaFave and Israel, *Modern Criminal Procedure* (West 4th Ed. 1974); Miller, Dawson, Dix and Parnas, *Criminal Justice Administration* (Foundation 2d ed. 1976); Vorenberg, *Criminal Law and Procedure* (West 1975): Weinreb, *Criminal Process* (Foundation 2d ed. 1974).

[14]For example, Krantz, *The Law of Corrections and Prisoners' Rights* (West 1973); Miller, Dawson, Dix and Parnas, *Sentencing and the Correctional Process* (Foundation 2d Ed. 1976); Orland, *Justice, Punishment, Treatment* (Free Press 1973); Singer and Statsky, Rights of the Imprisoned (Bobbs-Merrill 1974).

[15]Israel and LaFave, *Criminal Procedure in a Nutshell* (West 2d Ed. 1975); Krantz, *The Law of Corrections and Prisoners' Rights in a Nutshell* (West 1976); Loewy, *Criminal Law in a Nutshell* (West 1975).

[16]For example, Kaplan, *Criminal Justice* (Foundation 1973); Kerper and Kerper, *Legal Rights of the Convicted* – (West 1974); Rubin, *The Law of Criminal Correction* (Student Edition) – (West 2d Ed. 1973).

techniques.[17] Perhaps most valuable are books in all of these areas prepared specifically for prisoners. At oral argument in *Gilmore*, Mr. Justice White asked counsel for the appellees whether a handbook to guide an indigent prisoner on habeas corpus could be prepared. *Younger v. Gilmore*, Tr. of Oral Argument at 27. Counsel replied that it could be done, and it has been: Prison Law Project and Barristers Club of San Francisco, *A Manual on Habeas Corpus for Jail and Prison Inmates* (1973). Other groups – and particularly concerned state departments of correction themselves – have also written books that would be immensely helpful to prisoners with regard to all aspects of the law

[17]For example, Cohen, *Legal Research in a Nutshell* (West 2d Ed. 1971); Center for Correctional Training, New York City Department of Correction, *Legal Research Methodology* (English and Spanish language versions); Lloyd, *Finding the Law* (Oceana 1974); Pollack, *Fundamentals of Legal Research* (Foundation 4th Ed. 1973); Price and Bittner, *Effective Legal Research* (Little, Brown 3d Ed. 1969); Statsky, *Introduction to Paralegalism* 360-540 (West 1974); Statsky, *Legal Research, Writing and Analysis: Some Starting Points* (West 1974); West Publishing Company, *How to Find the Law* (West 6th Ed. 1965).

that might be of particular interest to them.[18] In our own State, the Institute of Government at the University of North Carolina is preparing a book on correctional law for prison and jail officials and probation and parole officers that should also be helpful to prisoners. The first chapter has been published in Clarke, "Prisoner Lawsuits and Prison Officials' Liabilities" (Institute of Government Administration of Justice Memoranda, November, 1975). In addition, a group of law students, lawyers and law professors is at work on a manual for North Carolina

[18]For example, ABA Resource Center on Correctional Law and Legal Services and Prison Law Reporter, *Prisoners' Legal Rights: A Bibliography of Cases and Articles* (2d Ed. 1974); Center of Law Enforcement and Correctional Justice, *Ohio Post-Conviction Manual* (Ohio Department of Rehabilitation and Correction 1973); Connecticut Department of Correction, *Landmark Decisions in Correctional Law: A Compendium of Recent Case Law* (1975); Prison Law Collective,–*Jailhouse Lawyer's Manual: How to Bring a Federal Suit Against Abuses in Prison* (1973); Rudovsky, *Rights of Prisoners; The Basic ACLU Guide to a Prisoner's Rights* (Discuss 1973); Toal, *Recent Developments in Correctional Case Law* (South Carolina Department of Corrections 1975); Toal, *The Emerging Rights of the Confined* (South Carolina Department of Corrections 1972). The Correctional Service of Minnesota has published pamphlets for inmates on the subjects of habeas corpus, appeals, and divorce. ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Post-Conviction Remedies*, Commentary at 51 (Approved Draft 1968); Jacob and Sharma, *supra* at 589-590; Linde, "*Let's Disbar the Jail House Lawyer*," *Proceedings of the American Correctional Association* 124 (1962); see also, *Novak v. Beto*, 320 F. Supp. 1206, 1209 (S.D. Tex. 1970), rev'd 453 F.2d 661 (5th Cir. 1971) ("An extensive legal manual, composed in layman's language, will soon be available in the writ rooms and prison libraries to assist inmates in the preparation of petitions.")

prisoners that should be published and provided to the Department of Correction for distribution to all of its prisons by the time of the decision in this case.

Training programs for inmates are also available. In the plan under review petitioners provided: "Those inmates who work in the libraries will be assigned library duties on a permanent basis. They will be trained to the best extent possible in researching legal questions and assisting inmates in their research." Petition for Certiorari 18, n.1. North Carolina in its 1974 LEAA application proposed to use a law book publisher or a local law school to provide the training. Exhibit A at 5, 9.

Such programs have been successful in other states. See *Johnson v. Avery*, *supra* at 489, 502. The senior attorney for the New York State Department of Correctional Services described his state's experience in an affidavit filed in the pending case of *Carter v. Lally*, Civil No. 72-642-K (D. Md.):

> "After law libraries were placed in the first 7 State instituions, representatives of West Publishing Company went to each institution and conducted education courses to train inmates to use the libraries. Later, in August and September, 1973, the Department and West conducted an intensive six-week training course . . . for a specially selected group of about 33 inmates from all the institutions. The inmates had classes in substantive law, legal research, legal writing and use of a law library, on Mondays, Wednesdays and Fridays. The rest of their time during the six-week period was devoted to studying in their cells and in a large conference room, using the law library, and consulting with the training staff. At the end of the period, the inmates were given legal problems to resolve. The answers were collected and graded,

> and certificates were awarded to the inmates, all of whom successfully passed the course. The inmates were then returned to their institutions to work in the law libraries as legal research clerks. Since 1973, with the assistance of West Publishing Company, the Department has conducted ongoing training programs for inmates in each of the 15 major institutions. About 200 inmates have participated, and more than 60% have passed . . . . West Publishing Company has prepared a manual which is used to train the inmates . . . .
>
> "In addition to training inmates to do work, the Department has also conducted legal training programs for employees. Although met with some skepticism and lack of interest at first these programs are now enthusiastically supported by employees who have participated in them. The programs have given employees a greater understanding of the legal rights of prisoners. The employees who participate in training are usually assigned to supervise the law libraries in their institutions, and they often work closely with the legal research clerks in resolving the inmates' legal problems.
>
> "It has been my experience that the inmate/staff training program and institution law libraries have work very effectively to provide legal assistance to prisoners. . . . Part of the legal research clerk's job is to discourage inmates from filing frivolous claims in court. In addition, the quality of the petitions and writs which are now being filed are substantially better than in the past."

Winters Affidavit 2-4. See also, ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 415, 427 (1974); Ziegler and Herman, "The Invisible Litigant: An Inside View of Pro Se Actions in the

Federal Courts," 47 N.Y.U.L. Rev. 157, 174, n. 56 (1972). The West and other training programs have been used in other states. ABA Resource Center, *supra*, 8 Ga. L. Rev. at 427. "Those institutions which have undertaken these programs have been surprised and pleased at the results. Prisoners initially participating in the program have often achieved an extremely high degree of competence, and have gone on to train other prisoners, as well as to assist on individual research problems." ABA Resource Center, *supra*, 8 Ga. L. Rev. at 427; see also, Bluth, "Legal Services for Inmates: Coopting the Jailhouse Lawyer," 1 Capital U. L. Rev. 59, 71-72, 79-80 (1972); Wexler, "The Jailhouse Lawyer as a Paraprofessional: Problems and Prospects," 7 Crim. L. Bull. 139, 143 (1971). Thus, the use of prisoners as paralegals is not uncommon. See also, *McDonnell v. Wolff*, 342 F. Supp. 616, 620, 631 (D. Neb. 1972). There has been a useful collateral benefit: it provides vocational training for the inmates and some of them have obtained jobs as paralegals upon their release from prison. ABA Resource Center, *supra*, 8 Ga. L. Rev. at 427-428; Wexler, *supra*, 7 Crim. L. Bull. at 155; *Carter v. Lally*, Civil No. 72-642-K (D. Md.), Statsky Affidavit at 4; Winters Affidavit at 4.

Petitioners have also urged that "the number of inmates who would benefit from the establishment of law libraries . . . would be miniscule." Brief for Petitioners 17. This unsupported factual assertion is inconsistent with the implications in the plan submitted by petitioners that even with law libraries adequate to accommodate 350 prisoners per week, there might be a waiting period for use of the libraries of up to three or four weeks. Petition for Certiorari 18, n.i. The experience in other states has been that the law libraries

are used by a significant proportion of the inmates. See Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners at 8; ABA Resource Center, *supra*, 8 Ga. L. Rev. at 425; LeDonne, *supra*, vol. 2 at 46, 54; Spector, "A Prison Librarian Looks at Writ-Writing," 56 Cal. L. Rev. 365, 367, 368 (1968); *cf.*, Burger, "Post-Conviction Remedies: Eliminating State-Federal Friction," 61 J. Crim. L., C. and P.S. 148, 150 (1970). There is no reason to believe that North Carolina's inmates would make any less use of their law books. Their intelligence and educational levels on the average are the same as those of prisoners in other states. Note, 1968 Duke L. J. 343, 348, n.21, 361. 10,500 of them have completed the ninth grade or more; 2,669 have completed high school or more; and 500 have had some college education. North Carolina Department of Correction, *State Correction Statistical Abstract* 37 (March 1976).

Obviously, petitioners advance no contention that their resistance to *Gilmore* is motivated by a desire to control writ writers in order to eliminate problems arising from their practice. *Cf., Johnson v. Avery, supra* at 488. That would be inconsistent with their basic position that because they permit inmates to give legal assistance to others they are in compliance at least with *Johnson v. Avery*. Moreover, there is no reason to believe that writ writers will flourish any more if the prisons have law books than they do now. On the contrary, the plan approved by the District Court contemplates that prisoners will be able to use the law library only one day every three or four weeks, Petition for Certiorari 17-18, n.1., a condition not conducive to the practice of jailhouse law. If controlling this practice were petitioners' concern, they could accomplish that

result by providing legal services for their prisoners. They made the choice, however, not to do that, and they do not argue that the order under review would adversely affect their administration of the prisons or the rehabilitation or discipline of their prisoners.

Thus, petitioners' plea that the Court defer to their expertise and discretion appears to be merely an allusion to a slogan without substance in this case. They have not suggested any respect in which their expertise was disregarded or their discretion unreasonably disturbed by the District Court's order. Certainly to avoid its constitutional responsibility it is not enough for a state to ask for discretion simply for the sake of having discretion.

VI.

ALTHOUGH A LEGAL SERVICES PROGRAM WOULD MORE ADEQUATELY PROTECT ITS PRISONERS' CONSTITUTIONAL RIGHT TO MEANINGFUL ACCESS TO THE COURTS, NORTH CAROLINA IS REQUIRED, AT A MINIMUM, TO PROVIDE LAW BOOKS FOR ITS PRISONERS.

The District Court, after approving petitioners' plan as modified, ordered the parties to submit briefs "on the issue of establishing an independent attorney office to assist prisoners in their legal matters." Supp. App. 19-20. Thereafter, the District Court held that respondents "do not have a constitutional right to have an independent attorneys office as well as a law library

program . . . ."[19] Supp. App. 24. The Court of Appeals agreed both that a legal services program would be helpful and "that adequate legal research facilities and

[19]In reaching this conclusion, the District Court decided that *Ross v. Moffitt*, 417 U.S. 600 (1974), was not applicable to this situation but that "some of the reasoning is appropriate." Supp. App. 23. In *Ross*, this Court held that the Constitution does not require the states to provide "counsel for discretionary state appeals and for applications for review in this Court." 417 U.S. at 602-603. The District Court correctly concluded that *Ross* involved a different factual situation than does this case. In *Ross*, the Court emphasized that by the time of his or her second appeal or petition for ceritorari a defendant has already had the benefit of a brief prepared by an attorney which affords an adequate chance for further review. 417 U.S. at 614; see also, *United States v. MacCollom*, 96 S. Ct. 2086, 2091-2093 (1976). That is not true in the case of civil rights actions and is not necessarily true in the case of post-conviction proceedings. Post-conviction petitions may raise points based on newly-discovered facts or newly-decided law, or may be filed by prisoners who for good reason never did appeal their convictions. The Court observed in *Ross* that the duty of the state is "only to assure the indigent defendant an adequate opportunity to present his claims fairly . . . ." 417 U.S. at 616. Because North Carolina prisoners may never have had the advice of counsel on issues appropriate for post-conviction review and cannot get such help in civil rights cases, for the reasons discussed in *Gilmore* and in the text they are denied that constitutionally required adequate opportunity to present their claims to the courts.

Resort to the courts may be the only avenue for a prisoner to redress an unconstitutional conviction or condition of confinement. Supp. App. 5. "A prisoner, perhaps more than the everyday citizen, has great need for meaningful access to the Courts." Supp. App. 5. For the prisoner, as for a criminal defendant, the judicial "process is not only the paramount dispute-settlement technique, but, in fact, the only available one," *Boddie v. Connecticut, supra* at 376-377, and denial of a

(continued)

an acceptable legal assistance program are to be thought of as alternatives and not as supplements to each other in the discharge of the State's obligation in this area." Petitioner for Certiorari 20. See also, *Johnson v. Avery, supra* at 488. All of the federal courts are in accord. *Stevenson v. Reed,* 530 F.2d 1207, 1208 (5th Cir. 1976), affirming and adopting 391 F. Supp. 1375, 1381 (N.D. Miss. 1975); *Bryan v. Werner,* 516 F.2d 233, 236-237 (3d Cir. 1975); *Cruz v. Hauck*, 515 F.2d 322, 331-333 (5th Cir. 1975); *Kirby v. Ciccone,* 491 F.2d 1310, 1312 (8th Cir. 1974); *Noorlander v. Ciccone,* 489 F.2d 642, 650-651 (8th Cir. 1973); *Novak v. Beto,* 453 F.2d 661, 664 (5th Cir. 1971); *United States ex rel. Russell v. Hendrick,* 376 F. Supp. 158, 160-161 (E.D. Pa. 1974); *Johnson v. Anderson,* 370 F. Supp. 1373, 1385 (D. Del. 1974); *Cross v. Powers,* 328 F. Supp. 899, 903-904 (W.D. Wis. 1971).

The position taken by the Commonwealth of Virginia as amicus curiae is consistent with this doctrine and therefore consistent with respondents' position. Virginia stated the principle as follows:

> "While it is conceded that the lack of a law library or access to such a library might, absent alternatives, unreasonably restrict access to the courts, it is submitted that the requirement of access can be satisfied either by the availability of legal materials, by counsel, or by any other appropriate device."

(footnote continued from preceding page)
prisoner's "full access to that process raises grave problems for its legitimacy." *Id.* at 376.

Ross obviously does not affect the law books issue. The lack of a right to counsel beyond the first appeal would seem to increase the need of prisoners for law books. Indeed, this Court only days after deciding *Ross* unanimously reaffirmed *Gilmore* in *Wolff v. McDonnell, supra* at 578-579.

Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners 9. Thus, Virginia asserts that it is in compliance with *Gilmore* and with the decision of the Court of Appeals in this case because it provides "indigent inmates with a system of appointed counsel who are available to confer with inmates regarding any legal matter relating to their incarceration" and "counsel have been appointed to represent the inmates at every major institution and correctional unit in the Virginia Department of Corrections." *Id.* at 6. The same Court of Appeals which decided this case has recognized that such a program could satisfy *Gilmore* but has ordered that a hearing be held on whether Virginia does in fact provide an acceptable legal assistance program. *Vette v. Virginia Department of Corrections,* 529 F.2d 518 (4th Cir. 1976) (unpublished opinion). There is reason to believe that on remand the District Court will find that Virginia's program is satisfactory. *Russell v. Oliver,* 392 F. Supp. 470, 473 (W.D. Va. 1975); *Collins v. Haga,* 373 F. Supp. 923, 925 (W.D. Va. 1974).

Several states now have legal services programs of varying dimensions, many of them comprehensive, for their prisoners. They are described in Exhibit B. There are also sixty-eight clinical law school programs providing assistance to prisoners in thirty states and the District of Columbia. CLEPR, *Survey and Directory of Clinical Legal Education* 1-24 (1976); see Glen, *Jailhouse Law Students; A Report on Law-Student-In-Correction Programs* (National Council on Crime and Delinquency 1973). Legal services programs have advantages over law library programs, and this Court

has encouraged the states to experiment with variations of them. *Procunier v. Martinez, supra* at 419; *Younger v. Gilmore, supra*; *Johnson v. Avery, supra* at 489-490, 502. "The obvious principal advantage of lawyer-staffed programs is competence." ABA Resource Center, *supra*, 8 Ga. L. Rev. at 407. They are able to conduct a "diagnostic interview" with prisoners immediately upon their reception into the prison system, when prompt action to protect their legal rights might be needed and when their apprehension about their criminal cases and civil problems is likely to be at its most disturbing level, and they are able to continue to provide legal counseling and representation from that early stage. Bluth, *supra*, 1 Capital U. L. Rev. at 69-70; LeDonne, supra, vol. 2 at 10-11. They have achieved commendable results in the reduction of frivolous petitions and the improved quality of petitions that are submitted to the courts. Attorneys or their assistants explain to prisoners who seek to file non-meritorious claims the reasons why the likelihood of success on their petitions is doubtful. Bluth, *supra*, 1 Capital U. L. Rev. at 66-67; Norman, *supra*, 48 Fla. B.J. at 737; Wilson, *supra*, 24 Legal Aid Brief Case at 258. In addition, they render useful services in civil areas beyond challenges to prisoners' convictions or the conditions of their confinement, such as: detainers; sentence computations; clemency proceedings; parole and conditional release hearings; classification and disciplinary proceedings; divorce, child custody and support cases; and with governmental benefits (veterans, social security, welfare) and other financial problems. ABA Resource Center, *supra*, 8 Ga. L. Rev. at 383; Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 499-505,

532-589; *Walsh*, "Jailhouse Lawyers: The Texas Department of Corrections Revokes Their License," 1 Capital U. L. Rev. 41, 52-54 (1972); Wexler, *supra*, 7 Crim. L. Bull. at 145; Wilson, *supra*, 24 Legal Aid Brief Case at 255-256; Comment, 1969 Wis. L. Rev. 574; Note, 23 So. Car. L. Rev. 294, 296-301 (1971). They are often able to resolve inmate legal problems by methods short of litigation, which is a service to the judicial system and to the prisons as well as to the prisoner. In the process they contribute to improving the morale of the prisoners, resolving problems that thwart the process of rehabilitation, including civil problems that might otherwise plague the prisoners even after their release, and reducing unrest and violence. *Hooks v. Wainwright, supra*, Post-Hearing Memorandum of the United States 28, n.57; Connecticut Department of Corrections, *Legal Assistance to Prisoners* 4-5 (1975); Jacob and Sharma, *supra*, 18 Kan. L. Rev. at 511; LeDonne, *supra*, vol. 2 at 11; Norman, *supra*, 48 Fla. B.J. at 736-737. At a time when our country and our legal profession are aware of the great need for improved delivery of legal services in civil as well as criminal cases to middle-income and poor persons, see 42 U.S.C. §2996, and have begun to meet the need with legal aid programs, *e.g.*, 42 U.S.C. §§2996 et seq., prepaid legal insurance programs, *e.g.*, N.C. Gen. Stat. §84-23.1 (1975 Supp.), and reduced-cost legal clinics, see *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975); Metzger, "Legal Clinics: Getting Into the Routine" 12 Trial 32 (June 1976), it is easy to perceive the special importance of legal services to prisoners. Some have compared the need – and the constitutional right – to medical care. Wedlock, "The Emerging Rights of the Confined: Access to the Courts and Counsel," 25 So. Car. L. Rev. 605, 648 (1973).

Gilmore held only, however, that the constitutional obligation of the states is to provide their prisoners meaningful help in preparation of their court actions. If the State can accomplish this by its plan for a law library program and legal research training of inmate paralegals, that satisfies the *Gilmore* standard. "(P)rison administrators are not required to adopt every proposal that may be thought to facilitate prisoner access to the courts." *Procunier v. Martinez, supra* at 420. Nevertheless, petitioners suggest that their program may not be meaningful to their prisoners. Brief for Petitioners 22. If their plan is not adequate, they must do more to make it meaningful, whether that involves developing paraprofessional or professional legal services programs or some other method for meeting the constitutional standard. See *Stevenson v. Reed,* 391 F. Supp. 1375, 1381 (N.D. Miss. 1975), aff'd, 530 F.2d 1207 (5th Cir. 1976).

This is not to say that the federal courts will have to supervise the North Carolina prison law library program. *Cf., Farrington v. North Carolina, supra.* At oral argument in *Gilmore,* Chief Justice Burger asked counsel for the appellees whether the District Court decision would require the states to provide law libraries comparable to those in this Court's own library. *Younger v. Gilmore,* Tr. of Oral Argument 22. The history of *Gilmore's* enforcement by the federal courts and the process of decision in this case show that that reasonable concern has not proved troublesome. *Gilmore* required not that a state "duplicate the legal arsenal that may be privately retained by a criminal defendant . . . but only [that it] assure the criminal defendant an adequate opportunity to present his claims fairly," *Ross v. Moffitt, supra* at 616, that is,

some "method of satisfying the legal needs of its charges." *Younger v. Gilmore, supra,* 319 F. Supp. at 112. *Gilmore* reached this Court at an intermediate stage: the three-judge court had ordered California to adopt new regulations to meet the constitutional mandate but had not yet decided the scope of California's responsibility. 319 F. Supp. at 112. After this Court affirmed that order, the three-judge court approved over the objection of the prisoner plaintiffs an expanded list of law books submitted by California. *Gilmore v. Lynch,* 2 Pris. L. Rptr. 21 (N.D. Cal. 1972).[20] That is the procedure which other courts have followed, *e.g., Battle v. Anderson,* 376 F. Supp. 402, 435 (E.D. Okla. 1974); *White v. Sullivan,* 368 F. Supp. 292, 296-297 (S.D. Ala. 1973); *Hooks v. Wainwright,* 352 F. Supp. 163, 168 (M.D. Fla. 1972); *Collins v. Schoonfield,* 344 F. Supp. 257, 280-281 (D. Md. 1972); see also, *Stevenson v. Reed,* 391 F. Supp. 1375, 1377 (N.D. Miss. 1975), aff'd, 530 F.2d 1207 (5th Cir. 1976); *Stone v. Boone,* Civil Action No. 73-1083-T (W.D. Mass. 1974) (consent decree), and which the District Court in this case used as a model. Supp. App. 12-13. The federal courts which have dealt with the issue in different contexts have similarly acted with

[20] The court held: Plaintiffs have not met the burden of showing that the proposed regulations are so inadequate that their approval would result in a continued denial to prisoners of their constitutional right to access to the courts." *Gilmore v. Lynch,* 2 Pris. L. Rptr. 21 (N.D. Cal., 1972).

The list of books for its law libraries proposed by California and approved by the court was substantially equivalent to North Carolina's, although it did include reporters going back at least to 1950, rather than 1960 as is the case with North Carolina's plan, *Shepard's Citations* for federal and state cases, and some volumes of *Modern Federal Practice Digest* (West 1973).

restraint in determining the extent of the help that the states must provide, recognizing that the constitutional standard is one of reasonableness and that the "choice of the manner in which the constitutional minimum is assured is essentially a state function." *Stevenson v. Reed, supra* 391 F. Supp. at 1381.

North Carolina's 1974 LEAA grant application demonstrates a commitment to its prison law library program that will insure its success as a meaningful help to its prisoners once this litigation is behind it. Administratively, the Department of Correction will be able to adjust and improve its program as it develops experience under it, so that it will find its program as beneficial as other states have theirs. In light of the positive approach that respondents are confident North Carolina will bring to this program, as displayed in that grant application, respondents are inclined to take lightly petitioners' reservations about the potential for their plan. Although respondents would like to see North Carolina do even more and take steps towards a prison legal services program, they anticipate that prison law libraries will be of great help to them and their fellow prisoners and are satisfied with the protection of their right to access to the courts which petitioners' plan, as modified and approved, promises to deliver to them.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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Attorney for Respondents

EXHIBIT A

1974 LEAA Grant Application Prepared By The North Carolina Department of Correction.

Department of Natural and Economic Resources
of Law and Order
Box 27687
Raleigh, North Carolina 27611

SUBGRANT APPLICATION

STATE PLAN - FOR OFFICE USE ONLY

Date Received | Control Number

APPLICATION ASSIGNED INITIALLY TO:

LEAA FUNCTIONAL CATEGORY | PROGRAM AREA

Application is hereby made for a grant under Section 301 of the Omnibus Crime Control and Safe Streets Act of 1968 (P. L. 90-351), as amended, in the amount and for the purposes set forth in this application.

4. Project Director (Name, address and telephone)
James Peeler Smith
240 West Morgan Street
Raleigh, N. C. 27609 829-2911

Applicant (Name, address, and telephone)
Department of Correction
240 West Morgan Street
Raleigh, N. C. 27603 829-2911

Signature | Date
James Peeler Smith | June 27, 1974

Implementing Agency (Name and telephone)
Division of Prisons
831 West Morgan Street
Raleigh, N. C. 829-3226

Authorizing Official (Name, title, address and telephone)
David L. Jones, Secretary
Department of Social Rehabilitation and Control
Raleigh, N. C. 829-4926

5. Financial Officer (Name, address and telephone)
C. A. Hooks, Jr.
831 West Morgan Street
Raleigh, N. C. 27609 829-3206

Signature | Date

Signature | Date
C A Hooks Jr | 7-2-74

Type of Application

7. State Plan and Program Area Under Which Application is Made

	If B or C previous Control Number	Plan Year	Program Area Number and Name
☒ Original ☐ Revision of Earlier Unfunded Application ☐ Continuation of Previous Subgrant	N/A	1973	

Project Start Date (Estimated)	9. Project Ending Date (Estimated)	10. Assumption of Project Costs Date (Estimated)
July 1, 1974	June 30, 1975	July 1, 1976

Name of Project (not to exceed 25 characters, including spaces)
Inmate Law Libraries

12. Federal Support Requested
$ 65,039.00

Will Other Federal Support be Available for Any Part of This Project?
☐ YES ☒ NO If yes, identify and explain in budget narrative.

6. Project Summary

To provide all inmates in the custody of the Division of Prisons access to legal materials in accordance with Johnson v. Avery and other Federal court decisions. There will be 7 libraries consisting of a broad range of legal materials. A Xerox machine will be located at one unit so that materials can be made available upon request. Inmates will be transported to the libraries to do legal research. There will be 5 Core libraries, located in other units, containing a few basic legal materials. These will be used as source materials. The project is expected to benefit all inmates within the State Corrections System and provide them the legal materials required under recent Federal court decisions. It will also be useful to Correction's personnel in that they for the first time will have access to legal materials.

C Department of Natural and Economic Resources
ision of Law and Order
O Box 27687
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15. Project Narrative Description: THE PROBLEM

Begin below and add as many continuation pages as necessary.

15. Federal courts have become increasingly concerned that persons committed to correctional systems have access to the courts. In Johnson v. Avery, the United States Supreme Court held that where prison systems did not offer an alternative, prison writ writers have a right to exist and that the prison department could not prohibit their assisting other prisoners in petitioning the courts. Relying on this decision, a California District Court ordered the California Department of Correction to provide certain specified legal materials to inmates. This decision was affirmed by the United States Supreme Court in a Per Curiam decision Younger v. Gilmore. Since these decisions, other Federal courts have placed similar requirements on other correction systems throughout the country. In Morgan et. al. v. R. L. Turner, (Civil Action Number 4277) and Robert Smith, et. al. v. Vernon Lee Bounds, Commissioner, State Department of Correction, et. al. (Civil Action Number 3052) the United States District Court for the Eastern District of North Carolina, Raleigh Division, approved a proposal for providing legal materials to inmates which it had ordered the North Carolina Department of Correction to prepare.

The Department of Correction is clearly responsible for providing this service to inmates. Other agencies may be aware to some extent of the problem. These agencies, including the state and local Bar Association, often desire to assist. However, the brunt of providing legal services falls on the Department of Correction, and it is the Department of Correction which must respond to the courts in the event that required legal services are not made available. At the same time, the providing of legal services must be under the control of the Department of Correction in order that this Department can insure that such services are offered to all inmates.

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16. Project Narrative Description: RELATIVE PROJECT PRIORITY

Begin below and add as many continuation pages as necessary.

16. The judicially-mandated requirement that the Office of Correction develop/implement a planned mechanism for providing inmates with access to and assistance with legal problems is one of the most significant problems facing this agency, and, consequently, a major priority among applications for LEAA funds.

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17. Project Narrative Description: GOAL STATEMENT AND MEASURABLE OBJECTIVES

Begin below and add as many continuation pages as necessary.

17. The goal of this project is to place legal materials within the access of every inmate within the North Carolina Correctional System. This project will enable each inmate to obtain those materials necessary for him to determine whether there has been an error in the proceeding in which he was convicted and whether his Federal and state rights have been violated while confined within the North Carolina Correctional System.

By providing the inmate with proper legal forms and directions for filing his court petition, the quality of petitions submitted will improve and the number of frivolous and groundless petitions will diminish. The Department of Correction intends that the inmate shall not only have access to the court, he shall have meaningful and effective access to the court. As noted, the ultimate result of this program should be a diminution in the number of groundless petitions and complaints filed in the state and Federal courts. The inmate himself will be able to determine to a greater extent whether or not his rights have been violated, and when he submits a petition to the courts which has on its face some merit, the court will be able to appoint counsel in those cases requiring it.

The objective will be implemented in the following manner: (a) Law materials will be ordered from the publisher; (b) Library areas will be prepared within designated units; (c) Legal forms will be designed for use by the inmate population; (d) Clerks will be trained in law library procedures; (e) Libraries will be open for inmate use; (f) Weekly inventories will be taken; (g) Replacement volumes will be ordered monthly.

The performance objectives are as follows: (1) To establish 7 libraries at designated unit and institutions; (2) To establish 5 core libraries at other units and institutions; (3) To reduce the number of frivolous civil rights petitions by fifty percent; (4) To reduce the number of rejected habeas corpus petitions; (5) To increase the quality of all inmate petitions submitted.

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13. Project Narrative Description: METHODS & PROCEDURES

Begin below and add as many continuation pages as necessary

The goal of providing legal assistance to inmates in the North Carolina Correctional System will be accomplished by placing legal materials within access of every inmate in the system. The project will progress in the following manner: (a) Legal material to be used in the libraries will be selected by the Project Director; (b) The Project Director will designate the sites of the libraries, and the core libraries. He shall do so in consultation with the Director of Prisons and his delegated agents; (c) The legal materials will be ordered from the publishers; (d) Unit staff will be instructed in the overall supervision of the library; (e) Uniform rules and regulations for access to the library will be drawn up by the Division of Prisons staff and submitted to the Project Director for approval; (f) Inmate assistants will be trained by the Project Director or other designated person in the fundamentals of the use of the library. They will be instructed as to their duties; (g) Library space will be prepared in the designated units and institutions; (h) Library materials will be distributed to the designated libraries upon receipt; (i) Libraries will be open for inmate use.

The Project Director will be responsible for selecting the legal materials to be included in the libraries and approving the designated locations of the libraries. He will also be responsible for approving the rules and regulations concerning access to the library. He will secure the training for those inmates designated to assist in the libraries and will supervise unit personnel in their supervisory responsibilities. He will monitor the project at all times and assist in the preparation of legal forms. He will assume responsibility for insuring that the legal materials are distributed to the proper units and that replacement volumes will be ordered. Unit Superintendents or their designated agents will exercise supervisory responsibility for the day to day operations of the libraries. This will include the responsibility of insuring that the inmates authorized to work in the libraries are performing their duties properly, and, if not, removing them from their library positions. Inmate assistants will operate the libraries on a day to day basis. They will be trained in shelving materials, and being able to identify material. They will also be taught how to update reference materials with pocket parts, loose leafs, enclosures, etc. They will be responsible for the security of materials and for insuring that legal materials do not leave the library.

An initial inventory will be made of the contents of all materials. No inmate except inmate assistants will be able to remove library materials from the shelf. Inmates will be permitted to enter the library, and request publications desired. A log will be kept of inmates entering the library and of materials given to the inmates. The inmate assistant will personally write down the materials given to a library user and will check off the materials when they are returned to the library shelf. At the end of the day, all volumes will be accounted for. There will be a monthly inventory of the conditions of all volumes in order to determine when a volume needs to be replaced. Additionally, inmate assistants will be required to make at least a cursory inspection of a volume's condition upon its receipt by the inmates and upon its return from the inmate user. Any inmate abusing library materials will be denied privileges. Typewriters on which inmate petitions can be prepared will be required. A Xerox machine will be required in one library in order that materials can be made accessible to persons throughout the

18. (Continued)

system. By the use of a Xerox machine it will be necessary only for the inmate to identify what he needs and that particular item can then be sent to him. It would not be necessary then to send the entire volume and therefore would serve both to keep the volume available at all times and to minimize the chance of its destruction. The Department would like to contract for the training of the librarian and of the inmate assistants. This will be accomplished through one of the law schools or one of the publishing companies. At least 21 inmates should be trained. A score of 70% on a law library skills test will qualify the inmate as a library assistant. This training provides the additional benefit of giving the inmates a skill which would be usable upon release. The location of these libraries will be within rooms within the institutions. The main library will be housed in a large room in one of the institutions at Raleigh. It will contain adequate shelf space and lighting so that it will be suitable for research work. A smaller room will be required for the major libraries but with the same general setup. The units having only core libraries will require only a small amount of shelf space and a small area in which the inmate can work. The core libraries will not need a specially trained inmate assistant. However, the Unit Superintendent may find it desirable to use an inmate in this capacity. The major problem foreseeable with the libraries will be to insure the security of the volumes. It is discussed above that security can best be maintained by frequent and thorough inventory and a check-in/check-out system.

Special training will be required for the librarian and inmate assistants in the use and handling of legal materials. This training should include instructions in updating legal materials and replacing outdated volumes. It should also include instructions in the basics of legal research. This will be accomplished by the use of a contract with an outside agency. The agency would be one of the law schools or one of the legal publishing companies. The physical facilities are now available to house these materials.

Inmate assistants will be selected on the basis of intelligence, conduct, literacy, and general clerical abilities. The method for training will be devised by the contracting agency and approved by this Department. Testing of retention will be measured by periodic checks of the inmate assistants and by monitoring the operation of the program where libraries having inmate assistants are located.

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14. Project Narrative Description: EVALUATION DESIGN

Begin below and add as many continuation pages as necessary.

19. The project will be evaluated by testing future submitted petitions against those which have been submitted in the past. This Department retains a large number of the petitions that have been submitted and therefore anyone trained in legal abilities will be able to judge the quality of those petitions submitted previous to the implementation of the law libraries as to those submitted after the law libraries have been instituted. The project will also be measured by the number of inmates having access to legal materials. Presently, access to material is minimal. Success of the program will be measured by the number of inmates actually utilizing the facilities made available. The strengths and weaknesses of the programs can be measured by comparing the quality and volume of petitions originating from each of the separate libraries. The number of frivolous civil rights petitions filed in FY 74-75 should be 50% lower than that which was filed in FY 73-74. The number of successful habeas corpus actions should increase. The quality of all petitions should significantly improve and this can be determined by comparing past petitions with ones filed after the libraries have been installed. Correction personnel will be interviewed after the program has been fully implemented in order to ascertain the opinion of field personnel as to the positive or negative results of the program.

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Project No. _____

Title _____

DETAILED BUDGET *

BUDGET CATEGORY			FEDERAL SUPPORT	STATE BUY IN	MATCHING CONTRIBUTION CASH	MATCHING CONTRIBUTION IN-KIND	CATEGORY TOTAL
PERSONNEL (Employees) 1. Salaries - List each position with yearly salary rate.							
Type of Employer	Position Title	Salary Rate	% of Time Devoted to Project				
	librarian	$10164-12816	100	$ 11,534.00	1,282.00		12,816.00
			Subtotal	$ 11,534.00	$ 1,282.00	$	$	$ 12,816.00
2. Fringe Benefits - Itemize percentages applicable for each benefit.							
FICA (Social Security)		5.85%		675.00	75.00			750.00
Retirement		8.95%		1,032.00	115.00			1,147.00
Hospitalization Insurance		216 x 12 months hospitalization		173.00	19.00			192.00
			Subtotal	$ 1,880.00	209.00	$	$	$ 2,089.00
			TOTAL PERSONNEL	$ 13,414.00	1,491.00	$	$	$ 14,905.00
CONTRACTUAL SERVICES (Itemize) 1. Individual Consultants (List by Individual or Type with Fee Basis and Amount of Time Devoted) Limited to Proven Reasonable Rate not Exceeding $135 per day or $16.87 per hour.							
Training of librarian and inmate clerks				4,500.00	500.00			5,000.00
			Subtotal	$ 4,500.00	$ 500.00	$	$	$ 5,000.00
2. Contracting or Service Organizations Performing Professional Services (List each by Type with Fee Basis and Amount of Time Devoted) Competitive Bidding Procedure Required to Establish Reasonable Rate.							
			Subtotal	$	$	$	$	$
			TOTAL CONTRACTUAL SERVICES	$ 4,500.00	$ 500.00	$	$	$ 5,000.00

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28. Detailed Budget (continued)

BUDGET CATEGORY	FEDERAL SUPPORT	STATE BUY-IN	MATCHING CONTRIBUTION CASH	MATCHING CONTRIBUTION IN-KIND	CATEGORY TOTAL
C. TRAVEL (Transportation and subsistence of Project Personnel Only. Consultant Travel to be included in (B).)					
50 weeks x $19 per diem	855.00	95.00			950.00
50 weeks x 150 mi. = 7500 mi. x 15¢ $1125.00	1,013.00	112.00			1,125.00
TOTAL TRAVEL	$ 1,868.00	$ 207.00	$	$	$2,075.00
D. SUPPLIES AND OTHER OPERATING EXPENSES (Supplies, Communications, Reproductions, Rent, etc.)					
(1) Direct Costs (Itemize)					
General Supplies	4,500.00	500.00			5,000.00
Library Materials	31,914.00	3,546.00			35,460.00
Subtotal	$36,414.00	$ 4,046.00	$	$	40,460.00
(2) Indirect Costs (Show how Indirect Cost Rate was approved and is to be applied in Budget Narrative)					
Subtotal	$	$	$	$	$
TOTAL OPERATING EXPENSE	36,414.00	$ 4,046.00	$	$	$40,460.00
E. EQUIPMENT (Itemize)					
(1) Purchase					
Item / Quantity / Unit Price					
Typewriter 7 375	2,363.00	262.00			
	$ 2,363.00	$ 262.00	$	$	$ 2,625.00
(2) Lease or Rental					
Item / Quantity / Unit Price					
Xerox Machine 1 $600/mo.	6,480.00	720.00			7,200.00
Subtotal	$ 6,480.00	$ 720.00	$	$	$ 7,200.00
TOTAL EQUIPMENT	$ 8,843.00	$ 982.00	$	$	$ 9,825.00
F. CONSTRUCTION					
(1) Remodeling					
(2) [illegible]					
TOTAL CONSTRUCTION	$	$	$	$	$
TOTAL PROJECT COST	65,033.00	$ 7,228.00	$		$72,265.00

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28. Budget Narrative
Begin below and add as many continuation pages (9a, 9b, etc.) as necessary to relate the items budgeted to project activities, and complete the required justification and explanation of the project budget.

1. Personnel

A librarian with administrative abilities will be required to maintain the operation of the system once established and monitor its effectiveness.

2. The Contractual Services

The librarian and inmate law clerks, who will staff the main library and the major libraries, will need to be trained in the area of legal research and in maintaining a legal library. There are two possible sources from which this training may be obtained. The first is through the West Publishing Company, which has developed extensive programs for use in prisons. The use of West is contingent on our purchasing a sufficient number of West publications. The second source of training is through one of the university law schools located in the immediate vicinity. A figure of $5,000 would be necessary in the event that we had to contract with a law school for training. Twenty-one inmate legal assistants and the librarian would be trained in this program at the outset. It may be that a second course or a refresher course will be required when the project has been underway for some time.

3. Travel

The librarian will be required to visit the libraries throughout the state in order to monitor the progress and effectiveness. It is anticipated that about one trip per week will be required which would likely include an overnight stay. Approximately fifty such trips will be made. Nineteen dollars is the current per diem paid in North Carolina. It is estimated the average trip will be 150 miles. Therefore, fifty trips times 150 miles is 7500 miles at 15¢ a mile equals $1,125.

4. Supplies

(a) General supplies will include paper for the Xerox machine, typing paper, carbon paper, file cards. It is expected that the use of the Xerox machine will be great, therefore, much paper will be required. It is also assumed that several thousands of legal petitions will be filed throughout the system. The general supplies, therefore, include both supplies needed by the inmates in filing their petitions and supplies needed in the operation of the library.

(b) Library materials. See Attachments D1, D2, and D3.
Additional cost - to cover additional volumes and price changes since December, 1973

5. Equipment

(a) Seven typewriters will be required for the typing of inmate petitions. There will be one typewriter in each of the seven major libraries.

(b) The Xerox machine. A high quality Xerox machine capable of copying material printed in books will be required. The price figure is based on experience within the institution. One of the comparable [illegible] machines now used in the Department is used to the extent of about 40,000 copies per month at a cost of slightly less than [illegible] per copy. It is estimated that this machine will be used about half as much as the machine presently used in the Department.

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SUBGRANT APPLICATION

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Project No. _____

Title _____

I. Budget Summary

BUDGET CATEGORY	FEDERAL SUPPORT	STATE BUY-IN	MATCHING CONTRIBUTION CASH	MATCHING CONTRIBUTION IN-KIND	CATEGORY TOTAL
Personnel	$ 13,414.00	$ 1,491.00	$	$	$ 14,905.00
Contractual Services	4,500.00	500.00			5,000.00
Travel	1,868.00	207.00			2,075.00
Supplies and Other Operating Expenses	36,414.00	4,046.00			40,460.00
Equipment	8,843.00	982.00			9,825.00
Construction					
Total	$ 65,039.00	$ 7,226.00	$	$	$ 72,265.00
Percent of Total	90 %	10 %	%	%	100%

II. Federal Dollar Benefit

Local Unit of Government (Citys and/or County's Only)	Federal Dollar Benefit
N/A	$
Total	$

III. Method of Computation

11a

Department of Natural and Economic Resources
of Law and Order
27687
North Carolina 27611

Attachment B
CERTIFICATION OF NON-SUPPLANTING

	FEDERAL REQUEST	CONTROL NUMBER (Leave blank if unknown)
North Carolina Department of Correction West Morgan Street Raleigh, North Carolina	$65,039.00	
	PROJECT NAME Inmate Law Libraries	

Necessary to provide assurance that subgrant funds will not be used to suppiant or replace funds that would normally be
This certificate is to be signed by the applicant agency's Chief Fiscal Officer.

AGENCY OR DEPARTMENT
EXPENDITURE AND BUDGET DATA

Expenditures	FY 19 72-73	$ 42,914,345.00	
Expenditures	FY 19 73-74	$ 54,215,224.00	% Increase 26.33 %
Budget (Excluding Subgrant Request)	FY 19 74-75	$ 65,962,898.00	% Increase 21.67 %
Average		$ 54,364,156.00	% Increase 24.00 %

CERTIFICATION

In accordance with the provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the applicant hereby certifies that federal funds will not be used to suppiant or replace funds or other resources that would otherwise have been made available for Law Enforcement and Criminal Justice.

The applicant further certifies that expenditures for Law Enforcement and Criminal Justice (excluding federal funds) will be at least as great as the preceding fiscal year plus the average annual increase calculated above.

J. A. Hooks, Jr., Controller

Name and title of agency's chief fiscal officer

CA Hooks 7/2/74

Signature of chief fiscal officer — Date

N. C. Department of Natural and Economic Resources
Division of Law and Order
P. O. Box 27687
Raleigh, North Carolina 27611

Attachment C
Assumption of Project Costs

Attachment C

It is possible that continuation funds of a lesser amount for Fiscal Year 75-76 will be solicited from the Governor's Committee on Law and Order. If LEAA funds are required for the following year, they will be substantially less than the amount for the original grant.

Attachment D

MAJOR LIBRARY MATERIALS

	Cost
North Carolina General Statutes	$250.00
North Carolina Reports (1960 -)	202.80
N. C. Court of Appeals Reports	120.12
Advance Sheets for N. C. and N. C. Court of Appeals Report	21.00
Strongs N. C. Index	236.00
North Carolina Rules of Court (West)	8.00
U. S. Code Annotated (West) Title 18 Title 28 2241-2254 (2 copies) Title 28 - Rules of Appellate Procedure Title 28 - Rules of Civil Procedure Title 42 - SS 1891-2010 (2 copies)	225.00
Supreme Court Reporter (West) (1960 -) with Advance Sheets	255.00
Federal Reporter 2d (West) (1960 -) with Advance Sheets	1,564.00
Federal Supplement (West) (1960 -) with Advance Sheets	1,114.00
Black's Law Dictionary (West)	15.00
Sokol Federal Habeas Corpus (Michie)	25.00
LaFave and Scott Criminal Law Hornbook (West) (2 copies)	27.00
Cohen Legal Research	8.00
Criminal Law Reporter (Bureau of National Affairs)	
Palmer Constitutional Rights of Prisoners (Criminal Justice Text Series)	11.50
	4,082.42
	x 7
	28,576.94

Appendix D_2

CORE LIBRARIES

1.	North Carolina General Statutes (Volumes 1B, 1C, 3C)	50.00
2.	Black's Law Dictionary	15.00
3.	Sokol Federal Habeas Corpus	25.00
4.	LaFave & Scott Criminal Law Hornbook	27.00
5.	Criminal Law Reporter	148.00
6.	Palmer, Constitutional Rights of Prisoners	11.50
		276.50
		x 5
		1,382.50

Department of Natural and Economic Resources
ion of Law and Order
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igh, North Carolina 27611

Attachment E
Certification of Filing of an Equal Employment Opportunity Program

I, Jim Smith (project director) certify that the Department of Correction (agency) has formulated an Equal Employment Opportunity Program entitled Equal Employment Opportunity Within the Department of Correction dated May, 1974 in accordance with the Amended Equal Employment Opportunity Guidelines 28 C.F.R. 42.301. etseq. Subpart E, and that it is on file in the office of Vic Donati, Jr. (name) Director of Personnel (title) 840 West Morgan Street, Raleigh, N. C. (address) 829-2557 (telephone) for review and audit by officials of the Division of Law and Order or the Law Enforcement Assistance Administration as required by relevant law and regulations, and that a copy of this Equal Employment Opportunity Program is on file in the office of the Division of Law and Order.

Signature: [signature]
Title: Senior Administrative Assistant
Address: 840 West Morgan Street, Raleigh, N. C.
Telephone: 829-2911

I, _____ (project director) certify that I have read the Amended Equal Employment Opportunity Guidelines (28 C.F.R. 42.301. etseq. Subpart E) and that no Equal Employment Opportunity Program is required to be filed by the _____ (recipient agency).

Signature: _____
Title: _____
Address: _____
Telephone: _____

(15)

EXHIBIT B

Younger v. Gilmore Compliance Record In The States, The District of Columbia And The Federal Government.

This exhibit was compiled by counsel for respondents from a variety of sources which are indicated in the appropriate places. Complete and up-to-date information was not available for all of the states. The following shorthand references will be used for sources that are frequently cited throughout this document:

ABA Resource Center – ABA Resource Center on Correctional Law and Legal Services, "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363 (1974).

Consortium – Consortium of States to Furnish Legal Counsel For Prisoners (The Consortium has provided two documents: (1) Program Narrative, (2) Final Report, Grant 75 DF-990013 (1975)).

Jacob and Sharma – Jacob and Sharma, "Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process," 18 Kan. L. Rev. 493 (1970).

LEAA Compendium – LEAA, *A Compendium of Selected Criminal Justice Projects* (1975).

LEAA – An LEAA computer printout, dated June 4, 1976 and entitled, "LEAA-Funded Programs Relating to Legal Law Libraries (Block Awards, '72-'76)." The printout thus includes only block awards and does not include discretionary grants, and even as to block awards the top of the printout cautions: "Following state reported data may not reflect all monies subgranted."

LeDonne – LeDonne, *Survey of Library and Information Problems in Correctional Institutions* (H.E.W. Office of Education 1974), in four volumes.

West printout – A computer printout provided by West Publishing Company on June 2, 1976 showing the law books sold by that company for each prison in the country.

ALABAMA

In *White v. Sullivan*, 368 F. Supp. 292 (S.D. Ala. 1973), the court approved a plan submitted at its request by the State for a complete law library at its penitentiary, except that there was no provision for Federal Supplement volumes.

ALASKA

Alaska received an LEAA grant for a law library at its Juneau prison which would be made available to its three other facilities by inter-library loan. "A new institution at Anchorage will have its own law collection." LeDonne, vol. 3 at 5.

ARIZONA

Arizona has complete law libraries in its two main prisons. ABA Resource Center at 423; LeDonne, vol. 2 at 18, 22, vol. 3 at 6; West Printout. Arizona received LEAA funds to upgrade its prison law libraries, provide instruction in legal research, and train inmates as law librarians and paralegals. LEAA #74A04R0077; LeDonne, vol. 2 at 18, 22, vol. 3 at 6.

The University of Arizona College of Law conducts a post-conviction clinic at the Arizona State Prison. *Foggy v. State ex rel. Eyman*, 107 Ariz. 532, 490 P.2d 4, 6 (1971).

Rule 32.5(b) of the Arizona Rules of Criminal Procedure provides that if an indigent files a state post-conviction petition the court "shall appoint counsel who may file an amended petition within 15 days of appointment." Confirming the impression that this rule provides for automatic appointment of counsel without initial screening is the Comment to that rule: "Appointed counsel's first duty is to ensure that the petitioner has included all his grounds for relief in one petition and to file an amended petition when necessary to do so."

ARKANSAS

Arkansas has complete law libraries in two of its prisons which serve all three of its prisons. ABA Resource Center at 423; LEAA Compendium at IV-361; LeDonne, vol. 3 at 7; West Printout.

Arkansas received LEAA funds for a full-time attorney plus supporting personnel, including law students from the University of Arkansas, to provide legal counseling, information, and representation to prisoners in a broad range of cases except cases against the Department of Corrections. LEAA funds have also been used for prison law libraries. LEAA Compendium at IV-361; LEAA Printout #72A05R0185; LeDonne, vol. 2 at 26.

CALIFORNIA

California has complete law libraries in all twelve of its prisons. *Gilmore v. Lynch,* 2 Pris. L. Rptr. 21 (1972); ABA Resource Center at 423; West Printout.

There is also a law library for sentenced inmates at the Los Angeles County Jail. *Brown v. Pitchess,* 13 Cal. 3d 518, 119 Cal. Rptr. 204, 206, 531 P.2d 772 (1975).

COLORADO

Colorado has complete law libraries at both of its prisons. *Hampton v. Schauer,* 361 F. Supp. 641, 642 (D. Colo. 1973); LeDonne, vol. 3 at 9; West Printout.

In addition, the public defender consults with prisoners on post-conviction matters. "He is not required to conduct post-conviction proceedings for inmates, but is authorized to do so if he is satisfied that there is arguable merit to the proceeding." *Hampton v. Schauer, supra* at 643-44.

CONNECTICUT

The Connecticut program is described in Connecticut Department of Correction, *Legal Assistance to Prisoners* (1975) and Greene and Whitehead, "Civil Legal Assistance to Prisoners" (1975), the official progress report of the Connecticut Legal Assistance to Prisoners Program prepared by its director and one staff attorney.

The prisons at Somers and Enfield have complete law libraries administered by a professional librarian. Material in the public domain, and copyrighted material

with the permission of the copyright owner (such as law reviews), is provided on microfilm. Where that is not possible, hardcover law books are provided. Eight other Connecticut prisons have the microfilm material only. In addition, at the request of a prisoner the State Library will photocopy material and send it to the prisoner free of charge. ABA Resource Center at 423; Connecticut Department of Correction, *supra* at 4-8; LeDonne, vol. 2 at 10, vol. 3 at 10; West Printout. Connecticut received LEAA funds for its legal collection at Somers. LeDonne, vol. 3 at 10.

The Legal Assistance Program for Prisoners has been in operation since January 1, 1972. It was organized at the initiative of the Department of Correction but is administered through the Connecticut Prison Association, a private non-profit organization. It has received LEAA funds. The attorneys in the program interview about ninety prisoners and take about thirty-one new cases per month. They provide comprehensive legal services to all of the state's prisoners and parolees in civil cases, including the following: habeas corpus, civil rights, detainers and warrants, time computation, sentence modification, parole revocation, pardon, and administrative (including prison transfers, visiting rights, classification, medical treatment); divorce (including property division, child custody, support and visitation rights and alimony), replevin to protect the property of prisoners, torts (as plaintiffs against the prison for injuries and as defendants in automobile accident, workmen's compensation and general negligence claims), paternity, probate court cases (including wills, trusts and estates and termination of parental rights cases), drivers license problems, military benefits cases, welfare, federal tax problems, deportation and related immigra-

tion cases, bankruptcy, and voting rights problems. Connecticut Department of Correction, *supra* at 3-4; Greene and Whitehead, *supra* at 1-39; LEAA Printout #72A09R0175; see also, Jacob and Sharma at 607.

DELAWARE

Delaware has fairly complete law libraries at two of its three major prisons and none at its fourth. *Johnson v. Anderson,* 370 F. Supp. 1373, 1383, 1385 (D. Del. 1974); ABA Resource Center at 423; West Printout.

FLORIDA

Florida is a member of the Consortium, which it joined in 1974. Its program, called the Florida Prison Project, is administered through Florida Legal Services, Inc., and became operational in April, 1975. It is still in its three year period of LEAA funding, and is working towards securing state funding at the end of the grant period.

The Florida Prison Project has staff offices in Gainesville and Tallahassee. It has a staff consisting of six attorneys, one Vista attorney, law students, and three secretaries. It handles such problems as state and federal habeas corpus, sentence computation, divorce, child custody, consumer law, change of name, etc.

The program was inspired by *Hooks v. Wainwright,* 352 F. Supp. 163 (M.D. Fla. 1972), which is still pending. Consortium Final Report at 4, 12-13; Consortium Program Narrative at 3; LEAA Compendium at III-201; Norman, "Civil Legal Services to Prison Inmates," 48 Fla. B.J. 736, 737-738 (1974).

GEORGIA

Georgia is a member of the Consortium, and was one of the original three members in 1972. Its program, with an annual budget of $125,000, is now fully funded by the State. It is administered by the University of Georgia Legal Aid and Defender Society and has four attorneys operating out of two offices, with the help of law students and secretaries.

> "During three years of operation, the Georgia project has developed a complete legal services program. At the Diagnostic and Classification Center at Jackson, the project office is staffed by two senior staff attorneys, a secretary and paid law students. . . . This staff primarily screens all incoming inmates in the system, isolates legal problems and initiates legal or administrative resolution measures.
>
> "The office located at the University of Georgia in Athens is staffed by the state supervisor, two staff attorneys, a secretary and law students. . . . Teams of students and staff attorneys travel extensively to institutions ranging from the maximum security Georgia State Prison to the rural work camps which dot the state."

The Georgia project handles habeas corpus and post-conviction proceedings, sentence reviews, sentence computations, parole advice, divorce and child custody cases, military discharge problems, and prison transfer matters. It had a caseload of 3,676 during one nine-month period. Consortium Final Report at 2-3, 9; Consortium Program Narrative at 4-5; LeDonne, vol. 2 at 10.

HAWAII

Hawaii State Prison at Honolulu has a complete law library. West Printout; see also, LeDonne, vol. 3 at 16.

Federal funds provided under the Public Library Services and Construction Act were used to buy basic level law materials. The Hawaii Supreme Court library sends duplicate materials to the prison library, and the prison librarian photocopies materials from the Supreme Court library. Attorneys have taught legal research classes at the prison. LeDonne, vol. 3 at 16.

In addition, Hawaii provides by statute that:

> "Any indigent person who is . . . convicted of an offense or offenses punishable by confinement in jail or prison . . .shall be entitled to be represented by a public defender." Hawaii Rev. Stat. §802-1 (1975 Supp.).
>
> "Any person entitled to representation by a public defender or other appointed counsel may at any reasonable time request any judge to appoint counsel to represent him." Hawaii Rev. Stat. §802-3 (1975 Supp.).

IDAHO

Idaho has a complete law library at its prison, purchased with the help of LEAA funds. LeDonne, vol. 3 at 17-18; West Printout.

ILLINOIS

Illinois has complete law libraries at eight of its nine prisons. *Black v. Brown,* 513 F.2d 652, 655 (7th Cir. 1975) (Joliet Prison); ABA Resource Center at 423; LeDonne, vol. 3 at 19-20; West Printout (Joliet Prison).

In Chicago, the Foundation for the New Business Ethic, largely dependent on volunteer attorneys,

> "has contracted with the Illinois Department of Corrections for the delivery of legal services at the complex at Joliet . . . .Emphasizing civil cases, it also handles quasi-criminal matters, with the exclusion of post-conviction matters and appeals. It has the authority to engage in class actions and section 1983 cases and soon will begin to appear at disciplinary hearings and to file post-conviction petitions. In six months, it has conducted over 1,000 interviews, closed 352 cases, and has another 354 open files. There are five full-time staff, including the director and two third-year law students who can practice in state courts. They are supplemented by fifty-four volunteers, twenty-seven attorneys, twenty law students and seven clerical workers."

ABA Resource Center at 408.

The law school at Southern Illinois University at Carbondale operates the Prison Legal Aid Program, which is funded by the state planning agency with some LEAA funds, and which furnishes non-criminal legal services to prisoners in about five prisons. CLEPR, *Survey and Directory of Clinical Legal Education* 19 (1976).

INDIANA

There is a complete law library at the State Reformatory at Pendleton. West Printout. In *Aikens v. Lash,* 371 F. Supp. 482 (N.D. Ind. 1974), the court ordered that a constitutionally adequate law library be provided at the Indiana State Prison at Michigan City.

IOWA

There is a complete law library in the state penitentiary. LeDonne, vol. 3 at 22; West Printout. There are complete law libraries in the Reformatory at Anamosa and the Women's Reformatory in Rockwell City, except that they may not have a Supreme Court reporter. West Printout.

In two adult facilities other than the penitentiary "students from Iowa Law School and community lawyers hold consultations with inmates." LeDonne, vol. 3 at 22.

The state post-conviction statute provides:

> "If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing, and legal services, these costs and expenses shall be made available to the applicant *in the preparation of the application*, in the trial court, and on review." Ia. Code Ann. §663A.5 (1976 Pocket Part) (emphasis added).

KANSAS

Kansas is a member of the Consortium, and was one of the original members in 1972. Its program is described in the Consortium Program Narrative and the Consortium Final Report, and also in the following documents: Glen, *Jailhouse Law Students; A Report on Law-Student-in Correction Programs* 6-8 (National Council on Crime and Delinquency 1973); LEAA Compendium at III-201, IV-360; LeDonne, vol. 2 at 10; Meyer, "The Defender Project," The KU Laws 5 (Fall, 1973); Wilson, "Legal Assistance Project at Leavenworth," 24 Legal Aid Brief Case 254 (1966);

Consortium, State of Kansas, *Legal Services for Prisoners, Inc.; Twelve Months Statistical Report* (1975); Legal Services for Prisoners, Incorporated, *The Facts About Legal Services for Prisoners, Incorporated* (1975 Report) (1976 Report) (two documents); Wilson and Meyer, *Legal Education in the Jailhouse: An Appraisal* (1974).

Oldest of the prison legal services programs, the Kansas Defender Project began in late 1965 as a clinical education program for law students at the University of Kansas which served the federal prison at Leavenworth. The next year, at the request of the state director of penal institutions, it was extended to the state prisons in the vicinity of the law school: primarily the State Penitentiary, but also the Correctional Institution for Women and the Reception and Diagnostic Center. The Kansas Defender Project received financial support during its first two years from the Metzenbaum Human Relations Fund of Cleveland, Ohio. For its second year it received additional funding from the National Defender Project of the National Legal Aid and Defender Association (NLADA) and that financial support continued for another three years. For the next two years, LEAA funds supported the Project. The law school provided the part-time service of faculty members and provided funds to employ law students for the Project during the summer. A law faculty member served as director of the Project and during the four years of NLADA funding, the Project employed a full-time attorney and a psychiatrist and clinical psychologist on a part-time basis.

Then in 1972 the Consortium was formed with Kansas as one of its three charter states. To administer the new program Legal Services for Prisoners, Inc. (LSP) was formed as a non-profit corporation independent of the law school and the prison system. LSP became operational in August, 1972. It is now fully funded by the State. The Kansas Defender Project continues to provide legal services to the federal prisoners at Leavenworth. *Potts v. Carlson*, No. 74-124-C3 (D. Kan. 1975).

LSP provides legal services for the inmates of all of the Kansas prisons. The professional staff, including the director, consists of three full-time and one part-time attorneys. LSP also relies on law students from the University of Kansas and Washburn University. The students are supervised by faculty members at each law school as well as by the professional staff.

LSP interviews each Kansas prisoner upon his reception into the prison system during the orientation process. Thereafter, it provides legal services in the areas of habeas corpus and post-conviction cases, representation at prison disciplinary proceedings, sentence computation or credit problems, detainer problems, parole revocation proceedings, extradition hearings, clemency applications, divorce and child custody cases, tax returns, and social security, veteran's benefits and welfare questions.

KENTUCKY

Kentucky has complete law libraries in two of its three prisons, and a partial library in the women's prison. LeDonne, vol. 3 at 24; West Printout. Its law

libraries were "begun with Library Services and Construction Act funds, are now funded by the Department of Corrections. These libraries are separate from the regular libraries, and through inter-library loan are open to the women's prison. Law consultants from the University of Kentucky also aid in filling inmate requests for legal information." LeDonne, vol. 3 at 24.

LOUISIANA

There are complete law libraries in all three prisons. ABA Resource Center at 423; West Printout.

MAINE

There is a complete law library at Maine State Prison but only the state statutes in the other two. There is inter-library loan service from the Maine State Law Library, which delined as the Maine State Prison strengthened its law collection. ABA Resource Center at 423; LeDonne, vol. 3 at 26; West Printout.

MARYLAND

The legal services programs for prisoners in Maryland are described in a Stipulation on file in *Carter v. Lally*, Civil No. 72-642-K (D. Md.), a pending case. The following information is taken from Exhibits 6, 7 and 8 to that Stipulation.

The Maryland State Public Defender has a collateral proceedings division which consists of seven full-time staff attorneys and two full-time and two part-time

investigators. They handle about one hundred cases per month in state court in the following categories: violation of probation; non-support; defective delinquency hearings; coram nobis, habeas corpus and post-conviction petitions; and sanity hearings.

The Maryland State Public Defender also has a division which began operation on January 1, 1975 with LEAA funds to provide assistance and representation to prisoners with the following legal problems: applications for post-conviction relief; detainers; parole revocation hearings; habeas corpus proceedings (extradition); and other criminally related matters. This division is staffed by two attorneys and four paralegals.

The Baltimore Legal Aid Bureau has a Prisoner Assistance Project which is federally funded and is staffed by a director, a staff attorney, two full-time legal assistants, and several law students. The Project provides legal assistance and representation for state prisoners in civil rights actions, state and federal post-conviction proceedings, detainers, state sentencing motions, extradition hearings, proceedings before the Inmate Grievance Commission, divorce proceedings, and forfeiture hearings. See also, ABA Resource Center at 405, n. 133.

The University of Baltimore Law School Program has law students interview prisoners at the prison system's reception center and explain their present legal situation and the various options available to them.

MASSACHUSETTS

Massachusetts has complete law libraries at its prisons in Norfolk and Walpole, and partial libraries in its other four prisons. *Stone v. Boone,* Civil Action No. 73-1083-T (D. Mass. 1974) (consent decree re: Walpole); ABA Resource Center at 423; LEAA Compendium at IV-362; LeDonne, vol. 3 at 29; West Printout.

The Prisoners' Rights Project in Boston with LEAA funding provides legal services to the inmates of the prisons at Walpole and Framingham. The Project staff consists of five lawyers and three paraprofessionals. They represent prisoners in a variety of matters, including criminal appeals and other post-conviction matters, cases against state agencies which are not resolved by negotiation, charges of escape or other crime within the prison, administrative matters such as medical problems, furlough applications, transfers, lost property, and parole revocation hearings. The Project staff also recommends legislation and administrative regulations. LEAA Compendium at IV-362; see also, ABA Resource Center at 405; Krantz, Bell, Brant and Magruder, *Model Rules and Regulations on Prisoners' Rights and Responsibilities* 208 (West 1973).

MICHIGAN

Michigan has complete law libraries in all five of its prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 30; West Printout.

MINNESOTA

Minnesota was one of the original members of the Consortium in 1972. Its program, called Legal Assistance to Minnesota Prisoners (LAMP) is now fully funded by the State and is no longer part of the Consortium. Cases involving challenges to convictions are handled by the state public defender. The following description of LAMP and the state public defender is taken from the Biennial Report of the Judicial Council of the State of Minnesota (1974) and from chapter VI of the Report of the Joint House-Senate Committee on Minnesota State Prison (February, 1976). See also, ABA Resource Center at 406; LeDonne, vol. 2 at 10.

LAMP employs two full-time attorneys and also uses students from the University of Minnesota Law School and the William Mitchell College of Law. Law students are employed during the summer to continue the services provided by students during the academic year.

LAMP does not handle post-conviction cases. Instead it helps prisoners with domestic problems such as divorce, child custody and visitation rights, with detainers, with representation in disciplinary hearings, with civil rights actions against the prisons, and with such other problems as property recovery, property civil damage actions, releases, name change, drivers license, military, tax, consumer protection, defendant tort suits, immigration, financial matters such as debts and bankruptcy, and personal injury.

The state public defender by court appointment represents prisoners in appeals, petitions for habeas corpus, post-conviction petitions, efforts to remove detainers, and parole revocation hearings.

MISSISSIPPI

There is a complete law library at the Mississippi State Prison at Parchman. *Stevenson v. Reed,* 530 F.2d 1207, 1208 (5th Cir. 1976), affirming 391 F. Supp. 1375, 1377, n. 2 (N.D. Miss. 1975); West Printout.

MISSOURI

Missouri has incomplete libraries at two of its prisons and only a few law books at each of the other two, and is now in litigation over the matter in *Thompson v. Camp,* No. 74 CV-97C (W.D. Mo.).

Missouri has received LEAA funds for a law student legal aid program for prisoners from the law schools at the University of Missouri and Washington University. LEAA #73A29R0575. In *Goldsby v. Carnes,* 365 F. Supp. 395, 405-406 (W.D. Mo. 1973) the parties entered into a consent judgment providing for an incomplete law library at the Jackson County Jail.

MONTANA

There is a complete law library at the Montana State Prison. LeDonne, vol. 3 at 35.

There is a Prison Legal Service Program which provides legal assistance to inmates at the prison. The law school at the University of Montana has a class of students working with the Program during the academic year. LEAA made a grant to the law school to support two students working with the Program during the summer. The Program handles post-conviction reviews, detainers, parole hearings, and divorce and child

custody cases. Jacob and Sharma at 607; LEAA Compendium at IV-364; LeDonne, vol. 3 at 35.

NEBRASKA

The Nebraska Prison has a complete law library. *McDonnell v. Wolff,* 342 F. Supp. 616, 618, 629 (D. Neb. 1972); LeDonne, vol. 3 at 36. It also provides an inmate paralegal to assist other prisoners. *Id.* at 620-621, 631; ABA Resource Center at 412-413; Jacob and Sharma at 593; Note, 1968 Duke L. J. 343, 359.

NEVADA

There is a law library at the Nevada Prison, but the extent of it is uncertain. ABA Resource Center at 423; LeDonne, vol. 3 at 37.

NEW HAMPSHIRE

There is a law library at the New Hampshire Prison, but the extent of it is uncertain. LeDonne, vol. 3 at 38.

NEW JERSEY

New Jersey, using LEAA funds, has complete law libraries at all seven of its prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 39; West Printout.

NEW MEXICO

New Mexico received LEAA funds to provide a basic set of law library materials at its prison and to train an inmate law librarian, expected to work with a clinical law school program. LEAA #74A35R0023.

NEW YORK

New York State, using LEAA funds, has complete law libraries in all twenty of its prisons. ABA Resource Center at 423; LEAA #73E36R3381; LeDonne, vol. 2 at 6; vol. 3 at 41, 42; *Carter v. Lally,* Civil No. 72-642-K (D. Md.) (Affidavit of Jerome L. Winters); see *Montanye v. Haymes,* 44 U.S. L. Week 5051, 5051 (1976).

New York City, also using LEAA funds, also has complete libraries in all of its prisons. ABA Resource Center at 423; LEAA #72A36R1157, #73A36D3390, #73A36R1500, #74A36M0132, #75A36R0123; LeDonne, vol. 3 at 42; West Printout.

New York State and New York City also have trained inmate paralegals who operate legal clinics under the supervision of a correctional officer. LeDonne, vol. 2 at 11, vol. 3 at 42; *Carter v. Lally, supra* (Affidavit of Jerome L. Winters).

New York State is beginning a statewide comprehensive legal services program for prisoners. This program is called New York State Prisoners' Legal Services and was implemented by the New York State Bar Association with ninety percent LEAA funds. Until now, New York has had only a patchwork of legal services programs representing some of the inmates at some of the state prisons. The new program will be

staffed by about thirty-five attorneys and a substantial number of paralegals, which will draw on law student assistance, and will have six offices near eleven prisons. It will provide representation in any case in which counsel is not otherwise available, including state and federal collateral attacks on convictions, sentence computation problems, parole matters, civil rights actions, immigration problems, divorce, child custody and visitation cases, consumer fraud and bankruptcy problems. New York State Bar Association "Grant Application to the New York State Division of Criminal Justice Services" (for grant to begin in 1976).

NORTH DAKOTA

North Dakota apparently has no law libraries in its prisons. LeDonne, vol. 3 at 47.

OHIO

Ohio provides complete law libraries in all seven of its prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 48; West Printout.

The legal services program, using trained inmate paralegals and law students from Capital University, and started with CLEPR funds, is described in Bluth, "Legal Services for Inmates: Coopting the the Jailhouse Lawyer," 1 Capital U. L. Rev. 59 (1972); see also, ABA Resource Center at 405-406.

OKLAHOMA

Oklahoma has complete law libraries in its prisons. *Seibert v. McCracken,* 387 F. Supp. 275, 281 (E.D. Okla, 1974); *Battle v. Anderson,* 376 F. Supp. 402, 435 (E.D. Okla, 1974); see, *id.*., No. 72-95-Civ. (July 16, 1975 Order Granting Permission to Disburse LEAA Funds); West Printout.

OREGON

The Oregon State Penitentiary has a complete law library; the other two Oregon prisons have incomplete libraries. *Washington v. Powell,* Civil Action No. 74-43 (D. Ore.) (Parties' Stipulation as to Facts and Order); West Printout. The matter is under litigation in *Washington v. Powell, supra.*

By statute, the court shall appoint the public defender to represent indigent prisoners in state post-conviction proceedings, and he shall be permitted to amend the petition within fifteen days following his appointment if he determines that it is defective in form or substance. Ore. Rev. Stat. §138.590(2), (3), (4) (1975).

PENNSYLVANIA

Pennsylvania provides complete law libraries in five of its eight prisons. *Bryan v. Werner,* 516 F.2d 233, 235, 239 (3d Cir. 1975); ABA Resource Center at 423; LeDonne, vol. 3 at 44.

Several of the prisons, including the ones at Dallas and Graterford, have established inmate legal clinics

staffed by trained prisoners which, under the direction of correctional officers and with the help of attorneys, assist other prisoners in the preparation of legal claims except suits against the prisons or their personnel. *Bryan v. Werner, supra* at 235; ABA Reosurce Center at 412; DeDonne, vol. 2 at 11, vol. 3. at 44.

In *Padgett v. Stein,* 406 F. Supp. 287, 297-298 (M.D. Pa. 1975), the court ordered the York County Prison authorities to submit "a plan that will guarantee inmates effective access to the courts, either by reasonable access to attorneys, by reasonable access to legal material, or by any other reasonable means that can be devised," suggesting several.

By statute, "The Public Defender, after being satisfied of the person's inability to procure sufficient funds to obtain legal counsel to represent him, shall provide such counsel" in state habeas corpus and post-conviction proceedings. Purdon's Penna. Stat. Ann., Title 16 §9960.6 (1976 Pocket Part).

RHODE ISLAND

Rhode Island received LEAA funds for a law library at its only prison. ABA Resource Center at 423; LEAA #73A44R0094.

The Rhode Island Public Defender Service, assuming the functions of the LEAA funded Inmate Legal Assistance Program, provides "indigent prisoners with a broad range of legal services, consisting in part of actions involving civil rights, post-conviction relief, divorce, bankruptcy, probate and bail." *Souza v. Travisono,* 498 F.2d 1120, 1121, and n. 4, 1124 (1st Cir. 1974); LEAA Compendium at IV-363; LeDonne, vol. 3 at 51.

SOUTH CAROLINA

South Carolina has complete law libraries at most of its nine prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 52; West Printout.

South Carolian is a member of the Consortium, which it joined in 1974. Through the Corrections Clinic at the University of South Carolina Law Center it provides comprehensive legal services to all prisoners in the state's correctional system. Its staff consists of a director, two staff attorneys, one part-time attorney (the former director), a secretary and thirty-three law students. In its first nine months it handled 832 cases, closing 450 of them, in the following categories: 202 applications for post-conviction relief; 21 pending offense matters, including 17 detainer problems; 48 divorce requests; several civil rights actions; 21 probation or parole hearings; 19 transfers; and 10 applications for credit for jail time. Consortium Final Report at 3, 4, 10-11; Consortium Program Narrative at 3; see also Jacob and Sharma at 607; Note, 23 So. Car. L. Rev. 294 (1971).

SOUTH DAKOTA

South Dakota has a complete law library at its prison. LeDonne, vol. 3 at 54; West Printout.

TENNESSEE

Tennessee has a complete law library in one of its prisons and smaller collections in two others. LeDonne, vol. 3 at 56; West Printout.

TEXAS

Texas has complete law libraries in thirteen of its sixteen prisons, which were partially funded by LEAA. ABA Resource Center at 423; LEAA #72A48R0932; LeDonne, vol. 3 at 57; Walsh, "Jailhouse Lawyers: The Texas Department of Corrections Revokes Their License," 1 Capital U. L. Rev. 41, 51 (1972); West Printout.

The comprehensive legal services program for Texas prisoners is described in *Novak v. Beto,* 453 F.2d 661 (5th Cir. 1971), remanding 320 F. Supp. 1206 (S.D. Tex. 1970); *Corpus v. Estelle,* 409 F. Supp. 1090 (S.D. Tex. 1975); LeDonne, vol. 2 at 10, 26; Walsh, *supra*, as follows:

After a prison legal assistance program using legal interns proved the need for such a program, inmate acceptance of it, and that it did not cause disruption in the prisons, the Texas Department of corrections in 1969 hired a full-time attorney for the program. He needed a law library as well as a secretary and office supplies. In 1971, one of the former interns was hired as a second attorney for the program. After the decision of the Court of Appeals in *Novak v. Beto, supra,* the program was expanded to thirteen attorneys. At the outset, the program gave priority to post-conviction matters. With the expansion, it began also to represent prisoners in detainer problems and civil cases such as divorces. It does not, however, represent prisoners in civil rights litigation.

UTAH

Utah has one complete law library for its three prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 58.

VERMONT

Vermont nas a complete law library. ABA Resource Center at 423.

Vermont, with only 350 incarcerated inmates, is a member of the Consortium, which it joined in 1974. Its project is administered through the State Defender General's Access to the Courts Project. It has three components: in addition to the correctional facilities defender it has an appellate defender and a juvenile defender. The correctional facilities defender office is staffed by the director, one other attorney, paralegal assistants and a secretary. It has handled post-conviction and sentencing relief actions, parole hearings, classification and program hearings, civil rights actions, and general civil actions such as divorce, personal property claims and medical complaints. Consortium Final Report at 11-12; Consortium Program Narrative at 3.

VIRGINIA

Virginia provides appointed counsel to confer with and assist the indigent inmates at all of its prisons regarding any legal matter relating to their incarceration except those for which they already have counsel. *Vette v. Virginia Department of Corrections,* 529 F.2d 518 (4th Cir. 1976) (unpublished opinion); *Russell v. Oliver,* 392 F. Supp. 470, 473 (W.D. Va. 1975); *Collins v. Haga,* 373 F. Supp. 923, 925 (W.D. Va. 1974); Brief of the Commonwealth of Virginia as Amicus Curiae in Support of the Petitioners 6.

WASHINGTON

Washington has complete law libraries at four of its six prisons. ABA Resource Center at 423; LeDonne, vol. 3 at 62.

"In Washington, a civil legal aid program was established through the State Department of Social Health and Welfare, to handle all cases except criminal appeals, including civil cases encountered by prisoners' families. There are three offices, each consisting of an attorney, a paralegal and a secretary, located near each of the four major institutions. The paralegal and attorney divide interviewing tasks at the institutions." ABA Resource Center at 406; LeDonne, vol. 2 at 10, 26.

WEST VIRGINIA

West Virginia has complete law libraries at its two major prisons. LeDonne, vol. 3 at 63.

WISCONSIN

Wisconsin, using LEAA funds, has complete law libraries at all five of its prisons. *Nickl v. Schmidt,* 351 F. Supp. 385, 390-391 (W.D. Wis. 1972); *Van Ermen v. Schmidt,* 343 F. Supp. 377, 378 (W.D. Wis. 1972); ABA Resource Center at 423; LEAA #73A55R1465; LeDonne, vol. 3 at 64, 65.

Legal services for Wisconsin prisoners are provided by the Legal Assistance to Inmates Program at the University of Wisconsin and by the Wisconsin Corrections Legal Services Program which has a service unit located in Milwaukee and a litigation unit located in Madison. The Corrections Legal Services Program is funded by LEAA with, of course, local matching funds, and also by a purchase-of-services agreement with the Wisconsin Division of Corrections. It is a comprehensive legal services program, operating under the auspices of Wisconsin Correctional Service, that provides a comprehensive program of civil legal assistance for all state prisoners and for former prisoners during at least the first two months after their re-entry into the community. The attorneys in the service unit, operating like a legal aid office, make regular visits to all of the state prisons and handle a wide range of civil legal problems, including divorce, bankruptcy, name changes, drivers license, child custody and support, will drafting, mortgage foreclosures, and consumer fraud. The litigation unit engages in law reform actions and brings lawsuits in state and federal courts on behalf of prisoners complaining against the Division of Corrections. Wisconsin Correctional Service, *Corrections Legal Services Program* (February, 1975).

The Legal Assistance to Inmates Program is funded half by the law school and half by the State Division of Corrections under a purchase-of-services agreement. It is staffed by senior law students under the supervision of two law professors. They interview all new prisoners as they enter the correctional system, discussing their legal problems and answering questions regarding their cases. They try to resolve detainers against the prisoners, obtain credit against their sentences for their jail time, prepare motions for sentence reductions, assist in requests for executive clemency and state post-conviction relief, and handle federal habeas corpus

cases. Civil problems are generally referred to the Corrections Legal Services Program although they do handle problems arising from small debts or traffic charges. *Cross v. Powers*, 328 F. Supp. 899, 900-901 (W.D. Wis. 1971); LEAA Compendium at IV-366; Dickey and Remington, "Legal Assistance for Institutionalized Persons – An Overlooked Need," ___ So. Ill. U. L. J. ___ (1976) (forthcoming); Kimball, "Correctional Internships – A Wisconsin Experiment in Education for Professional Responsibility," 18 J. Leg. Ed. 86, 86-88 (1965); Comment, 1969 Wis. L. Rev. 574; Note, 1967 Wis. L. Rev. 514, 515, n. 6; October 29, 1975 (Memorandum from the Legal Assistance to Inmates Program Staff re: Scope of Legal Assistance to Inmates Program.

WYOMING

There are only a few law books at the Wyoming prison. ABA Resource Center at 423; LeDonne, vol. 3 at 67.

DISTRICT OF COLUMBIA

There is a complete law library at the District of Columbia prison at Lorton. ABA Resource Center at 423.

The District of Columbia Public Defender Service, with LEAA funds, represents the inmates at Lorton in collateral attacks on their convictions, sentence computation and reduction questions, parole matters, detainers, and institutional administrative matters such

as those relating to custody status. It refers general civil problems to the Neighborhood Legal Services Program or the Lawyers to Lorton Project sponsored by the District of Columbia Bar Association. It is staffed by three attorneys, a legal paraprofessional, law students and two secretaries. *United States v. Simpson*, 436 F.2d 162, 168-169 (D.C. Cir. 1970); LEAA Compendium at IV-368; LEAA, *An Exemplary Project: The Public Defender Service of the District of Columbia*, vol. 1 at 34-38.

FEDERAL BUREAU OF PRISONS

The federal government provides complete law libraries and also legal services programs in all of its prisons. *United States v. Simpson*, 436 F.2d 162, 169, and n. 23 (D.C. Cir. 1970); ABA Resource Center at 423; Jacob and Sharma at 613; Bureau of Prisons Policy Statement 2001.2B, 1 Pris. L. Rptr. 243-245 (1972); *Stevenson v. Reed*, 530 F.2d 1207 (5th Cir. 1976), Affidavit of Eugene N. Burkin, General Counsel of the United States Bureau of Prisons, dated December 20, 1973, R. Vol. 1, 137-138.